No. 76-4041

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Illinois Brick Company, American Brick Co., Ampress Brick Co., Inc., Anjo, Inc., Chicago Block Co., Inc., E. L. Ramm Company, Heights Block, Inc., Joliet Concrete Products, Inc. and Northfield Block Co. hereby petition that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on June 22, 1976.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 536 F.2d 1163 and is printed in the Appendix at page App. 1. The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 67 F.R.D. 461 and is printed in the Appendix at page App. 10.

JURISDICTION

The Seventh Circuit's judgment was entered on June 22, 1976. (App. 23.) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

QUESTION PRESENTED

In a civil antitrust suit brought by the State of Illinois alleging price fixing by manufacturers of concrete block, does the State of Illinois, which purchased buildings, one of whose components was concrete block, have a claim for the alleged overcharge paid by the first purchaser of the concrete block, on the theory that the overcharge was passed on to the State of Illinois, even though the chain of distribution of concrete block did not involve any "cost-plus" or similar pricing arrangements?

STATUTES INVOLVED

Section 1 of the Sherman Act, 15 U.S.C. §1, provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . ."

Section 4 of the Clayton Act, 15 U.S.C. §15, provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-

> trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

STATEMENT OF THE CASE

Respondent, the State of Illinois (hereinafter the "State"), on behalf of itself and various governmental entities in the Greater Chicago area, brought this civil action charging that the defendants (the Petitioners), all of whom manufacture and/or sell concrete block, violated Section 1 of the Sherman Act, 15 U.S.C. §1, by conspiring to fix the price of concrete block. The State seeks to recover the alleged overcharge in the price of concrete block used in public building projects. Jurisdiction of the District Court was predicated upon Section 4 of the Clayton Act, 15 U.S.C. §15.

In 1973, the United States indicted the defendants, charging that they violated Section 1 of the Sherman Act by conspiring to fix the price of concrete block. In the wake of the federal indictment, numerous civil treble-damage actions were filed, all alleging the same conspiracy and seeking to recover the same alleged overcharge. The civil cases were brought by masonry contractors, general contractors, private builders and the State. Several of the cases were class actions. All of the civil actions except the State's were settled.

In the State's case, defendants propounded interrogatories to the plaintiffs, seeking detailed information about their purchases of concrete block. Defendants then based

a summary judgment motion on the plaintiffs' answers to the interrogatories.* The plaintiffs did not submit by affidavit, answers to interrogatories or deposition any contradictory or explanatory facts in opposition to the summary judgment motion. The ground for defendants' summary judgment motion was that under this Court's opinion in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), these plaintiffs had no claim since they were not direct purchasers of concrete block, and did not fit the limited "cost-plus" exception recognized in *Hanover Shoe* which would allow them to recover for an alleged pass-on of the alleged overcharge.

The facts in the record for the summary judgment motion were as follows. The State and other governmental entities did not buy concrete block. Instead, they bought buildings, a package of goods and services of which concrete block was merely one component part. Furthermore, the concrete block did not reach the public entities through pre-existing "cost-plus" contracts. Instead, the governmental bodies awarded their building project contracts pursuant to a competitive bidding process. The concrete block produced by defendants is sold to masonry contractors. The masonry contractors submit bids to general contractors for the goods and services that comprise the masonry portions of the building projects. The general contractor in turn collects all sub-bids for goods and services and compiles a bid for a particular building project in competition with other general contractors. Thus, before any of the defendants' concrete block reaches public

* The answers to the interrogatories were in the form of answers to a questionnaire sent out by plaintiffs' counsel.

building projects, it passes through at least two unrestrained levels—the masonry contractors and the general contractors—where complex and independent pricing decisions are made.

It was upon this record that the defendants moved for summary judgment against all plaintiffs who purchased buildings, not concrete block. The District Court classified these plaintiffs as ultimate consumers, *i.e.*, those who obtain a finished product from a middleman in the chain of distribution who has altered or added to the goods received from the manufacturer. The District Court held that the ultimate consumer's injury, if any, was too remote and granted summary judgment. The Court of Appeals reversed.

REASONS FOR GRANTING THE WRIT

A. The Decision Below Is In Direct Conflict With A Controlling Decision Of This Court.

The Seventh Circuit's decision which allows indirect purchasers to sue for an alleged illegal overcharge on the theory that it has been passed on to them either in whole or in part conflicts with this Court's decision in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968).

In *Hanover Shoe,* a monopolist was charged with exacting an illegally high price for its product, shoe manufacturing machinery. At trial, the monopolist attempted to defend on the ground that plaintiff had, in fact, suffered no injury since plaintiff had passed on the overcharge to its customers by increasing the prices of the shoes it made.

This Court ruled that the first or direct purchaser could recover the full overcharge (trebled) *regardless* of any passing on of that overcharge to others in the chain of distribution, *i.e.*, the indirect purchasers.

In rejecting the passing on defense, the Court stressed the virtual impossibility of proving the pass-on, *i.e.*, establishing a causal link between an overcharge incurred by a business in acquiring supplies or equipment and the pricing decisions of that company's personnel in the competitive market. The Court stated:

> "A wide range of factors influence a company's pricing policies. Normally the impact of a single change in the relevant conditions cannot be measured after the fact; indeed a businessman may be unable to state

> whether, had one fact been different . . ., he would have chosen a different price. . . . Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price had the overcharge been discontinued. *Since establishing the applicability of the passing-on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable.*" (Emphasis added.) 392 U.S. at 492-93.

The Court recognized one limited exception to its ruling that the first purchaser could collect the full overcharge and that was where the first purchaser resold the product pursuant to a pre-existing "cost-plus" contract. In such a case, the proof of a pass-on would be feasible. 392 U.S. at 494.

In the case at bar, the plaintiffs are clearly *not* first or direct purchasers of concrete block. Instead, they are indirect purchasers to the extent that concrete block is a component of the buildings which they bought. It is also clear that the pricing mechanisms through which the concrete block passed into the buildings did not involve preexisting "cost-plus" contracts or similar situations. In spite of these two dispositive facts, the Seventh Circuit has held that these indirect purchasers can sue and recover for the alleged overcharge. That result is contradictory to the policy enunciated in *Hanover Shoe.*

B. There Is A Conflict Among The Circuits On The Issue Of Whether Indirect Purchasers Can Sue And Recover For Illegal Overcharges.

Hanover Shoe, which should have resolved once and for all the issue of who could recover for an alleged overcharge for a product which goes through a chain of distribution, has not had that effect. Instead, the lower courts have failed to apply the *Hanover Shoe* decision uniformly, and a conflict among the circuits on this important issue of antitrust law has developed.

The Seventh Circuit in its decision in this case has joined the Ninth Circuit, *In re Western Liquid Asphalt Cases,* 487 F.2d 191 (9th Cir. 1973), *cert. denied sub nom. Standard Oil Co.* v. *Alaska,* 415 U.S. 919 (1974), in concluding that indirect purchasers can sue and recover for an overcharge on the theory that it has been passed on to them even though a pre-existing "cost-plus" contract situation does not exist. *See also Armco Steel Corp.* v. *State of North Dakota,* 376 F.2d 206 (8th Cir. 1967), a pre-*Hanover Shoe* decision by the Eighth Circuit. Additional authority in support of the Seventh and Ninth Circuits is as follows: *Boshes* v. *General Motors Corp.,* 59 F.R.D. 589 (N.D. Ill. 1973); *In re Master Key Antitrust Litigation,* 1973-2 TR.CAS. ¶74,680 (D. Conn. 1973); *Carnivale Bag Co.* v. *Slide-Rite Mfg. Corp.,* 395 F.Supp. 287 (S.D. N.Y. 1975); *Lefrak* v. *Arabian American Oil Co.,* 1975-2 TR.CAS. ¶60,621 (E.D.N.Y. 1975).

The position of the Seventh and Ninth Circuits is in conflict with the Third Circuit, which has held that indirect purchasers cannot recover for such an overcharge. *Mangano* v. *American Radiator & Standard Sanitary Corp.,* 438 F.2d 1187 (3d Cir. 1971), *affirming Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.,* 50 F.R.D. 13 (E.D. Pa. 1970).

The Seventh Circuit's decision is also in conflict with many district court decisions. *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.,* 323 F.Supp. 381 (E.D. Pa. 1970) (public entities which purchased buildings which contained price-fixed plumbing fixtures had no claim for the overcharge); *City & County of Denver* v. *American Oil Co.,* 53 F.R.D. 620 (D.Colo. 1971); *United Egg Producers* v. *Bauer International Corp.,* 312 F.Supp. 319 (S.D. N.Y. 1970); *Donson Stores Inc.* v. *American Bakeries Co.,* 58 F.R.D. 481 (S.D.N.Y. 1973); *City of Akron* v. *Laub Baking Co.,* 1972 TR.CAS. ¶73,930 (N.D. Ohio 1972); *Stern* v. *Lucy Webb Hayes,* 367 F.Supp. 536 (D. D.C. 1973); *Travis* v. *Fairmount Foods Co.,* 346 F. Supp. 679 (E.D. Pa. 1972).

C. This Case Should Be Reviewed By This Court Because The Pass-On Issue Is Of Major Importance Both To Antitrust Litigation And The Administration Of Justice.

The pass-on issue is of immense importance in antitrust litigation. Approximately 192 horizontal price-fixing cases have been brought by the federal government in the past five years. Handler and Blechman, *Antitrust and the Consumer Interest: The Fallacy of Parens Patriae and a Suggested New Approach,* 85 Yale L.J. 626, 636 n. 46 (1976). It is a common phenomenon that hosts of civil treble-damage actions (often class actions) are filed soon after a government case is commenced. In light of decisions such as the Seventh Circuit's, purchasers at all levels of the distribution chain (including remote purchasers such as those in this case, who have purchased something other

than the product allegedly subject to the price-fix) may now contend that an alleged overcharge was passed on to them either in whole or in part.

Antitrust litigation is well known for being complex, protracted and expensive both for the litigants and the courts. It will become even more so if the pass-on issue is interjected into these suits. 392 U.S. at 493. If, as this Court said in *Hanover Shoe* (392 U.S. at 493), the problems of proving that an overcharge was passed on are normally insuperable for the defendant, they are equally prodigious for the plaintiffs in the chain of distribution. This Court clearly indicated that it did not want the federal judiciary expending its precious and limited resources on such futile tasks as trying to determine whether there was a pass-on of an overcharge. Instead, absent a "cost-plus" situation, the first purchaser is to be allowed to sue and recover for the full overcharge. That result harmonizes the dual public interests of enforcing the antitrust laws and rationally using our judicial resources. By refusing to follow *Hanover Shoe,* courts like the Seventh Circuit are authorizing litigation which will become an insoluble morass, consuming enormous amounts of judicial energy that would otherwise be spent in other areas. Tracing an overcharge through a chain of distribution "might be an accountant's paradise, but it would be a court's purgatory." *City & County of Denver* v. *American Oil Co.,* 53 F.R.D. 620, 637 (D. Colo. 1971).

Another serious problem created by the Seventh Circuit's decision and those like it, is that defendants will be subjected to multiple recoveries (trebled) for the same alleged overcharge. Some courts speak of apportioning the overcharge among the purchasers in the chain of distribution. Putting aside the enormous effort such an exercise would take, it would not solve the problem. *Hanover Shoe* clearly holds that a defendant cannot defend against the first purchaser by showing a pass-on of the overcharge to others in the chain of distribution and the first purchaser is entitled to collect the full overcharge (trebled). If indirect purchasers can now sue the same defendant for the same overcharge (as the Seventh Circuit now holds), the defendant is subject to multiple recoveries for the same overcharge, and each recovery is trebled.*

Putting aside the issue of whether subjecting defendants to multiple recoveries (trebled) for the same overcharge violates due process, such a result is patently unfair to the defendants. Either *Hanover Shoe* should be applied to preclude suits by indirect purchasers for the overcharge, or *Hanover Shoe* should be abrogated so that defendants may raise the defense of a pass-on against the first purchaser and others in the chain of distribution.

The lower federal courts are getting the antitrust law in this key area into a tangle of considerable proportions. Only a definitive decision by this Court will clarify the situation and permit the antitrust laws to be enforced uniformly and fairly in all circuits without unduly burdening the judiciary. The issues in this case merit review by this Court.

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* While the Seventh Circuit recognized this danger, it had no solution to offer. Solutions suggested by other courts will not work. The bar of the statute of limitations will only work if fortuitously the filing of conflicting claims is just right. Collateral estoppel will not work since the party to be estopped must have had a full and fair opportunity to litigate the factual question at issue. See 1B Moore, *Federal Practice,* ¶0.411-412, 0.441[3] (2d ed. 1974). Indirect purchasers who are not parties to a prior action cannot be estopped from contending that the alleged overcharge was passed on to them.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX

In the

United States Court of Appeals

For the Seventh Circuit

No. 75-1561

STATE OF ILLINOIS, et al.,

Plaintiffs-Appellants,

v.

AMPRESS BRICK COMPANY, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION
June 22, 1976

Before FAIRCHILD, *Chief Judge,* CUMMINGS and PELL, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* This treble damage antitrust action was brought by the State of Illinois on its own behalf and on behalf of various governmental entities in the Greater Chicago area. Except for the American Brick Company,[1] the eleven defendants are manufacturers of

[1] American Brick Company was sued on the theory that it was a purchaser of concrete block for resale primarily from its production affiliate, Carey Brick Company.

concrete block. In Count I of the complaint Illinois charged that the defendants violated Section 1 of the Sherman Act (15 U.S.C. § 1) by conspiring to fix the price of concrete block, allegedly resulting in overcharges of "an amount in excess of $3 million." Because of the treble damage provision contained in Section 4 of the Clayton Act (15 U.S.C. § 15), plaintiffs apparently sought in excess of $9 million in damages.[2]

The present lawsuit was filed after the United States had filed similar criminal and civil cases against eleven manufacturers of concrete block used in building construction in the Greater Chicago area. Pleas of *nolo contendere* were accepted in the criminal case and a consent decree was entered in the civil action. Comparable private treble damage actions brought by masonry contractors, general contractors and private builders were settled with the payment of agreed-upon sums of money. The settlements were without prejudice to this suit.

Plaintiffs assert that the defendants sold large quantities of concrete block to masonry and general contractors for incorporation in public buildings and structures. Most of the building project contracts were awarded pursuant to competitive bidding based on plans and specifications setting forth the amount and type of concrete block required. The bids submitted included the cost of the concrete block purchased from the manufacturer or masonry contractor. Thus the plaintiffs were not the first purchasers of the concrete block although they alleged that the cost of the product was passed on to them.

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[2] In Count II, plaintiffs were two named hospitals suing also on behalf of all Chicago area private hospitals (in part supported by private funds) that were damaged by purchases of concrete block. No set damages were claimed in Count II. Summary judgment was also rendered for defendants with respect to that Count.

Defendants moved for summary judgment against all plaintiffs that were not direct purchasers of concrete block from defendants.[3] In its memorandum opinion (67 F.R.D. 461), the district court first noted that the plaintiffs did not purchase concrete block indirectly pursuant to cost-plus contracts but instead purchased buildings of which concrete block was a component part. As Judge Kirkland put it, the critical issue before him was "whether parties more remote than the direct purchaser from an alleged anti-trust violator have standing to sue under Section 4 of the Clayton Act * * *." 67 F.R.D. 464.

Citing *Hanover Shoe, Inc.* v. *United Shoe Machinery,* 392 U.S. 481, the district court held that an immediate consumer or direct purchaser unquestionably has standing to sue the antitrust violator. 67 F.R.D. 466. However, relying upon our decision in *Commonwealth Edison* v. *Allis-Chalmers Mfg. Co.,* 315 F.2d 564, 567 (7th Cir. 1963); certiorari denied, *sub nom. Illinois* v. *Commonwealth Edison Co.,* 375 U.S. 834, the court held that "as to *ultimate* consumers [such as plaintiffs], their injuries are too remote and [in]consequential to provide legal standing to sue against the alleged antitrust violator." 67 F.R.D. 468. Therefore, summary judgment was granted as to this phase of defendants' motion.[4]

In private actions seeking to vindicate rights conferred by Congressional enactment, to establish standing the

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[3] Defendant also moved for summary judgment as to direct purchasers from non-defendants. The denial of this motion is not involved in this appeal. As a result of the partial summary judgment, the claims of only four governmental entities remained in the suit.

[4] Final judgment was subsequently entered thereon pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

plaintiffs must show an injury in fact that is "arguably within the zone of interests to be regulated by the statute." *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150, 153; *Malamud* v. *Sinclair Oil Co.,* 521 F.2d 1142, 1151-1152 (6th Cir. 1975). The district court held that plaintiffs' interests as ultimate consumers were not protected by the antitrust laws. We disagree and therefore reverse.

Our holding that ultimate consumers may recover for violations of the Sherman Act is motivated by the broad language of the treble damage provision in Section 4 of the Clayton Act. It provides in pertinent part:

> "*Any person* who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor * * * and shall recover threefold damages by him sustained * * *." (15 U.S.C. § 15; emphasis supplied.)

The broad reach of a treble damage action under the Sherman Act was stressed in *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.,* 334 U.S. 219, 236, where the Supreme Court noted that the Sherman Act "does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers * * *. The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated."[5] No subsequent decision of that Court has confined the treble damage remedy to

[5] See also *Hawaii* v. *Standard Oil Co.,* 405 U.S. 251, 262; *Minnesota Mining & Mfg. Co.* v. *New Jersey Wood Finishing Co.,* 381 U.S. 311, 318; *Radovich* v. *National Football League,* 352 U.S. 445, 454.

direct consumers. The sweeping language of the statute and the policy encouraging private enforcement of the antitrust laws persuade us that if plaintiffs can prove a violation which resulted in an injury to them, they ought to recover. See *Hawaii* v. *Standard Oil Co., supra,* 405 U.S. at 262; *Zenith Radio Corp.* v. *Hazeltine Research, Inc.,* 395 U.S. 100, 130-131.

Although the Supreme Court has not decided the issue presented here, the two courts of appeals that have squarely considered the problem have held that ultimate consumers are within the reach of the treble damage statute. In *In re Western Liquid Asphalt Cases,* 487 F.2d 191 (9th Cir. 1973), certiorari denied *sub nom. Standard Oil Co.* v. *Alaska,* 415 U.S. 919, the Ninth Circuit noted that Congressional policy favors the allowance of recovery to plaintiffs who can prove both the occurrence of an antitrust violation and that they thereby incurred substantial damage. The Court refused to confine standing under Section 4 of the Clayton Act to first-line purchasers or more remote consumers who bought goods subject to a cost-plus contract. Similarly, in *Armco Steel Corporation* v. *State of North Dakota,* 376 F.2d 206 (8th Cir. 1967), the court held that because unlawfully fixed prices could injure the ultimate consumers, North Dakota should be permitted to recover $258,255 on its indirect purchases of metal products eventually used in state highways.

The District of Columbia, Second, Fourth, Fifth and possibly the Sixth Circuits also seem hospitably inclined to the rule that ultimate purchasers may sue under Sec-

tion 4 of the Clayton Act to recover damages incurred as a result of a price-fixing conspiracy.[6]

Analysis of defendants' cases does not lead to a different conclusion. Defendants rely primarily on *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481. In that case, the Court held that first-line purchasers could recover for antitrust violations even if the purchaser passed on the cost of the product attributable to the anti-competitive practice. 392 U.S. at 488. However, the Court did not enshrine privity as a requirement of recovery under the antitrust laws. See *In re Western Liquid Asphalt Cases, supra,* 487 F.2d at 196-198; *Boshes* v. *General Motors Corporation, supra,* 59 F.R.D. at 592-596. Although the Court noted that more remote purchasers might have difficulty in establishing the relationship between the antitrust violation and the injury suffered, we do not believe *Hanover Shoe* precludes those purchasers from ever recovering.

[6] See *State of Illinois* v. *Bristol-Myers Co.*, 470 F.2d 1276, 1278, n. 4 (D.C. Cir. 1972); *In re Master Key Antitrust Litigation*, 528 F.2d 5, 12, n. 11 (2d Cir. 1975); *South Carolina Council of Milk Producers, Inc.* v. *Newton*, 360 F.2d 414, 417-418 (4th Cir. 1966), certiorari denied, 385 U.S. 934; *Lehigh Portland Cement Co.* v. *City of North Bay Village* (Misc. No. 2364, 5th Cir. 1972), denying appeal in *Southern General Builders, Inc.* v. *Maule Industries, Inc.*, 1973-1 CCH Trade Cases ¶ 74,484 (S.D. Fla. 1972); *Dailey* v. *Quality School Plan, Inc.*, 380 F.2d 484, 487-488 (5th Cir. 1967). In a different context, the Sixth Circuit seems to lean the same way in *Malamud* v. *Sinclair Oil Corporation*, 521 F.2d 1142 (6th Cir. 1975). The split among the district courts was noted in *Boshes* v. *General Motors Corporation*, 59 F.R.D. 589, 592-593, n. 5 (N.D. Ill. 1973) and in the opinion below, 67 F.R.D. at 464, n. 1. We approve of those district court decisions permitting ultimate consumers to sue antitrust violators.

The Third Circuit's *per curiam* opinion in *Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (1971), is cited by defendants in favor of the summary judgment below. However, a careful reading of *Mangano* shows that the affirmance was based on "the district court's sound discretion to dismiss the actions of the present appellants solely for inexcusable failure to answer interrogatories" (438 F.2d at 1188). More significantly, the failure to answer the interrogatories revealed plaintiffs' inability to show that the alleged antitrust violations were the proximate cause of the injury to the plaintiffs.[7]

Our decision in *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co., supra,* is distinguishable on an identical rationale. In part, that decision was based on *Keogh* v. *Chicago & North Western Railway Co.*, 260 U.S. 156, which held that complaints against legally established regulated rates must first be addressed to the regulatory agency. 315 F.2d at 567. See *United States* v. *Radio Corporation of America*, 358 U.S. 334, 346-347. However, like *Mangano,* the decision in *Commonwealth Edison* also rests on the failure to prove that the violations damaged the plaintiffs. Because the rates were set by an independent regulatory agency, plaintiffs could not show that the allegedly inflated prices for the generators resulted in higher prices for the electricity produced. In the next consideration of Commonwealth Edison's antitrust claim, the author of our previous opinion approved the rule of *Clark Oil Co.* v. *Phillips Petroleum Co.*, 148 F.2d 580 (8th Cir. 1945), certiorari denied, 326 U.S. 734, that the Clayton Act

[7] To the extent that there is dicta that only the first consumers in a chain of distribution may sue under Section 4 of the Clayton Act, we respectfully disagree with the Third Circuit.

permits ultimate consumers to recover from antitrust violators, thereby refuting defendants' interpretation of our prior holding. *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co.*, 335 F.2d 203, 208 (7th Cir. 1964); see also *Boshes* v. *General Motors Corporation, supra,* 59 F.R.D. at 597, n. 10.

The error in defendants' reading of *Hanover Shoe, Mangano,* and *Commonwealth Edison* is that they view the failure to show that antitrust violations caused plaintiffs' injury as an element of standing. It is not. Rather, the question is one of fact (*Perkins* v. *Standard Oil Co.*, 395 U.S. 642, 648; *In re Western Liquid Asphalt Cases, supra,* 487 F.2d at 199), and any decision thereon is an adjudication on the merits. Cf. *Sierra Club* v. *Morton,* 405 U.S. 727, 741. Although in *Mangano* and *Commonwealth Edison* the facts were sufficiently clear early in the litigation to permit resolution of the case on a motion to dismiss or for summary judgment, in the instant case they are not.

We do not believe that the difficulty plaintiffs might have in proving the injury requires us to dismiss the suit. Nor do we believe that dismissal is warranted because both the immediate purchasers and the plaintiffs in this case might recover damages from the defendants. As Judge Carter pointed out in *In re Western Liquid Asphalt Cases, supra,* 487 F.2d at 200-201, according standing to ultimate purchasers need not result in double recovery because appropriate means can be found to apportion any damages that might be assessed.

To the extent that the district court held that these plaintiffs, as opposed to ultimate consumers in general, lack standing, we disagree. The plaintiffs here have alleged an injury in fact and are within the target area of

the Sherman and Clayton Acts. They have shown that they were "within the area of the economy which [defendants] reasonably could have or did foresee would be endangered by the breakdown of competitive conditions." *In re Western Liquid Asphalt Cases, supra,* 487 F.2d 199.

The judgment below is reversed insofar as it grants summary judgment on Counts I and II against indirect purchasers of concrete block, with costs to plaintiffs-appellants.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 73 C 2427
	)	
AMPRESS BRICK CO., INC., et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER
April 28, 1975

This cause comes before the Court on defendants' motion for partial summary judgment against all plaintiffs who have purchased concrete block indirectly through contractors on competitive bid contracts, or have made direct purchases from non-defendants.

This case is a civil antitrust suit by the State of Illinois on its own behalf and on behalf of various governmental entities in the Greater Chicago area. All defendants, except American Brick Company, manufacture concrete block. The State brings this action under Section 4 of the Clayton Act, 15 U.S.C., § 15, alleging that defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by conspiring to fix the price of concrete block in the Greater Chicago area.

Approximately one-third of the more than seven hundred plaintiffs represented by the State have responded to interrogatories propounded by defendants. The responses reveal that only four of the plaintiffs purchased concrete block directly from a defendant. One plaintiff disclosed it had made direct purchases from a non-defendant. The remaining responding plaintiffs did not purchase concrete block directly from any defendant, nor did they purchase concrete block indirectly pursuant to a cost-plus contract. What these plaintiffs purchased were buildings: a package of goods and services of which concrete block was one component part.

All but nine of the responding plaintiffs awarded their building contracts pursuant to competitive bidding. The concrete block produced by defendants is sold primarily to masonry contractors who submit bids to general contractors for the masonry portions of projects. The general contractors in turn bid on an entire building project.

Defendants contend that only direct purchasers of concrete block have standing to sue the manufacturers for alleged violations of anti-trust laws.

Plaintiffs argue that the ultimate consumer of a price-fixed product should have standing to sue because the ultimate consumer bears the burden of the anti-trust violation.

The issue is whether parties more remote than the direct purchaser from an alleged anti-trust violator have standing to sue under Section 4 of the Clayton Act, 15 U.S.C. § 15.

Defendants argue that *Hanover Shoe, Inc.* v. *United Shoe Machinery,* 392 U.S. 481 (1968) stands for the proposition that only direct purchasers from an anti-trust violator have standing to sue the alleged violator, except in

certain limited circumstances. That case held that the trial court's refusal to hear evidence that the direct purchaser plaintiff had "passed-on" alleged illegal over-charges to its customers was not error, and that a direct purchaser's showing of payment of an illegally high price, along with the amount of overcharge, constitutes a prima facie case.

Some subsequent decisions have interpreted *Hanover* as limiting recovery to the initial or first purchaser in the chain of distribution.[1] Another line of authority is emerging to the contrary.[2]

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[1] *Donson Stores, Inc.* v. *American Bakeries Co.*, 58 F.R.D. 481 (S.D.N.Y. 1973); *Balmac, Inc.* v. *American Metal Products Corp.*, 1972 Trade Cas. ¶74,235 (N.D. Calif. 1972); *City of Akron* v. *Laub Baking Co.*, 1972 Trade Cas. ¶73,930 (N.D. Ohio 1972); *Travis* v. *Fairmount Foods Co., Inc.*, 346 F. Supp. 679 (E.D. Pa. 1972); *Philadelphia Housing Authority* v. *American Radiator and Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970), aff'd sub nom. *Mangano* v. *American Radiator and Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971); *City and County of Denver* v. *American Oil Co.*, 53 F.R.D. 620 (D. Colo. 1971); *United Egg Producers* v. *Bauer International Corp.*, 312 F. Supp. 319 (S.D. N.Y. 1970). *See also, Atlantic City Electric Co.* v. *General Electric Co.*, 226 F. Supp. 59, 71 (S.D.N.Y.), application denied, 337 F.2d 844 (2d Cir. 1964). *Cf. State of West Virginia* v. *Chas. Pfizer & Co.*, 314 F. Supp. 710 (S.D.N.Y.) aff'd. 440 F.2d 1079 (2d Cir.) cert. denied, 404 U.S. 871, 92 S.Ct. 81, 30 L.Ed.2d 115 (1971); *State of Minnesota* v. *United States Steel Corp.*, 8 Cir., 299 F. Supp. 596, rev'd. 438 F.2d 1380 (8th Cir. 1971). *See also, Cusick* v. *N.V. Nederlandsche Combinatie Voor Chem Ind.*, 317 F. Supp. 1022, 1024 (E.D. Pa. 1970).

[2] *In Re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973), cert. denied, 415 U.S. 919 (1974); *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973); *In Re Master Key Litigation*, 1973 Trade Cases ¶74,680 (D. Conn. 1973).

In *Hanover*, a manufacturer of shoes brought suit against a shoe machinery manufacturer alleging that the machinery manufacturer's policy of leasing rather than selling shoe-making machinery led to monopolization of the industry by defendant. Defendant machinery manufacturer argued that plaintiff shoe manufacturer had passed the overcharge on to its own customers, thereby sustaining no loss. The Supreme Court rejected the "passing-on" defense, noting two grounds for its decision: (1) recognition of the defense would reduce the deterrent effect of private antitrust enforcement since the individual buyers of shoes could not effectively assert their claims; and (2) the consequent inquiry into profit and loss computations would unduly burden plaintiff and complicate the litigation.

The rationale behind the first reason was the need to preserve the effectiveness of antitrust laws. If the passing-on defense was permitted to stand, enforcement of antitrust violations would fall upon the ultimate consumer, the party least likely to bring suit:

> These ultimate consumers, in today's case the buyers of simple pairs of shoes, would have only a tiny stake in a lawsuit and little interest in attempting a class action. In consequence, those who violate the antitrust laws by price fixing or monopolizing would retain the fruits of their illegality because no one was available who would bring suit against them. Treble-damage actions, the importance of which the Court has many times emphasized, would be substantially reduced in effectiveness. 392 U.S. at 494.

The Supreme Court's second reason for rejecting the pass-on defense was the Court's conclusion that normally the pass-on issue would present "insurmountable" problems of proof.

> A wide range of factors influence a company's pricing policies. Normally the impact of a single change in the relevant conditions cannot be measured after the fact; indeed, a businessman may be unable to state whether, had one fact been different . . . ., he would have chosen a different price. . . . Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price had the overcharge been discontinued. Since establishing the applicability of the passing on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable. 392 U.S. at 492.

The Supreme Court rejected availability of the pass-on defense to an anti-trust violator as against his direct customer. The Court's concern was that attempts to establish the defense would bog down litigation and undermine the effectiveness of the private enforcement mechanism. The Court was determined to see that the anti-trust violator not slip away on some technical ground.

Defendants here attempt to use the Supreme Court's rejection of the pass-on defense to deny standing to sue to any plaintiff not a direct purchaser from the anti-trust violator.

Stressing the distinction between "offensive" and "defensive" use of the passing-on doctrine, Judge Decker in this district recently held that "*Hanover Shoe* neither explicitly nor implicitly" creates "a general rule of 'privity' for standing to sue in a private antitrust action." *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973). Judge Decker stressed that the Supreme Court:

> . . . nowhere specifically states that *Hanover Shoe* had standing because it was in 'privity' with United Shoe or that privity is a requirement of standing in private antitrust cases. In fact, this court has searched in vain for any discussion of the question of standing in the *Hanover Shoe* opinion. If the court there had intended to establish such a rule, it clearly would have said something about the recent and substantial body of authority which had reached a contrary conclusion and permitted suits under §4 of the Clayton Act by those not in 'privity' with the alleged antitrust violator. See, e.g., . . . *Karseal Corp.* v. *Richfield Oil Corp.*, 221 F.2d 358 (9th Cir. 1955) . . . *State of Washington* v. *General Electric Co.*, 246 F. Supp. 960 (W.D. Wash. 1965). 59 F.R.D. at P. 595.

Judge Decker therefore concluded that:

> "it would be stretching *Hanover Shoe* beyond all recognition to hold that its rejection of the passing-on defense somehow returns §4 of the Clayton Act to the 'days when "privity" was king' . . . " 59 F.R.D. at p. 596.

Defendants cite a line of cases led by *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970), *Aff'd per curiam sub nom.*, and *Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971) to support their interpretation of *Hanover*. In *Mangano*, homeowners brought suit alleging that illegal overcharges by manufacturers of plumbing fixtures had increased the cost of their buildings. Plaintiffs contended that the overcharge had been passed-on through wholesalers and building contractors to them as ultimate purchasers. The Third Circuit held that *Hanover Shoe* barred plaintiffs' claims primarily on two grounds: (1) establishing that illegal overcharges were passed on would involve "insurmountable" problems of proof, and (2) suits by anyone other than the initial

purchaser would subject defendants to the risk of multiple liability.

The Ninth Circuit considered these contentions in a later decision, *In Re Western Liquid Asphalt Cases,* 487 F.2d 191 (1973), finding both questions resolvable without denying standing to non-direct purchasers. This Court agrees with the Ninth Circuit decision.

It is this Court's opinion that the Supreme Court's elaboration on the difficulties of proof encountered as to once-removed purchasers was not intended to foreclose, as a matter of law, the right of once-removed purchasers ever to sue and establish damages. Rather, the Supreme Court held that when the first purchaser sues, he need not establish that damages were not passed on because of the difficulties of proof associated therewith.

The second ground of the Third Circuit's opinion in *Mangano* was that granting standing to other than first-purchasers would subject defendants to the risk of multiple liability. This Court disagrees and notes the following language from *In Re Western Liquid Asphalt Cases, supra,* on page 201:

> Thus, in passing-on cases, the intermediary should recover the amount of the overcharge that was not passed on, if the proof shows that the ultimate consumers did not pay it all, and any lost profits resulting from increased costs. The ultimate purchasers should obtain the remainder of the overcharge, and any other damages proximately caused. Facts raising reasonable inferences, based upon appropriate market data, should suffice to go to the jury on these questions.

In a case where both the intermediary and the ultimate consumer are not before the court in the same suit, settlement or award in the first suit can be credited against the damages determined in the second suit, if greater, thereby

avoiding multiplicity of liability. In this way the antitrust laws would not be frustrated, for example, by prior settlements with initial, and perhaps friendly, purchasers.

This Court does not believe that in *Hanover* the Supreme Court intended to foreclose standing to all plaintiffs not immediate purchasers from alleged antitrust violators.

There are several types of consumers that may decide to sue.[3] The first is an *immediate consumer* (direct purchaser) who usually acts as a middleman, reselling either the same goods or a refined product to another consumer. A second is a *final consumer,* who obtains goods from the manufacturer or from a subsequent consumer, but who in either case acquires the goods in the same condition as originally made and sold by the manufacturer. The last type of consumer is an *ultimate consumer* who obtains a finished product from a middleman that has altered or added to the goods received from the manufacturer. There are, then, *two* different types of indirect consumers: the final consumer and the ultimate consumer.

The immediate consumer unquestionably has standing to sue the antitrust violator. *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp., Supra.*

As to the *final* consumer, many recent cases, excluding those that construe *Hanover Shoe* restrictively, grant standing to sue the antitrust violator. *State of Washington* v. *General Electric Co.,* 246 F. Supp. 960 (W.D. Wash. 1965); *Public Utility District No. 1 of Chelan County Washington* v. *General Electric Co.,* 230 F. Supp. 744 (W. D. Wash. 1964); *Armco Steel Corp.* v. *North Dakota,* 376

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[3] This breakdown is adopted from "Mangano and Ultimate Consumer Standing: The Misuse of the Hanover Doctrine," 72 Colum. L. Rev. 395, 396 (1972).

F.2d 206 (8th Cir. 1967); *Missouri* v. *Stupp Brothers Bridge & Iron Co.*, 248 F. Supp. 169 (W.D. Mo. 1965); *State of Washington* v. *American Pipe & Construction Co.*, 274 F. Supp. 961 (W.D. Wash. 1967); *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973); *In Re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973).

Standing to sue for the final consumer turns on whether the court applies the "direct injury test" or the "target area test". The direct injury approach requires plaintiff to suffer the immediate effect of the antitrust activity. This has been interpreted to apply only to the party dealing directly with the antitrust violator—the immediate consumer. All other parties are deemed to be remote and indirect. *Loeb* v. *Eastman Kodak Co.*, 183 F. 704 (3rd Cir. 1910). The practical effect of this test is to require privity, although the cases rarely address themselves to that concept.

The broader target area test was first espoused in *Karseal Corp.* v. *Richfield Oil Corp.*, 221 F.2d 358 (9th Cir. 1955). In applying that test to a final consumer plaintiff, the court said he must be "within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry." *Id.* at 55.

The Ninth Circuit has both expanded and narrowed the *Karseal* test depending upon circumstances of the particular case. In *Twentieth Century Fox Film Corp.* v. *Goldwyn*, 328 F.2d 190 (9th Cir. 1964), the court expanded the target area to that "area which it could reasonably be foreseen would be affected by the [antitrust] conspiracy." Again, the indirect consumer granted standing was a *final* consumer. Yet in the recent case of *Hawaii* v. *Standard Oil Co.*, 431 F.2d 1282, aff'd 405 U.S. 251 (1972), the court refused standing to sue in an action by the state as *parens*

patriae on behalf of its citizens suing for alleged injury to the general economy. The court stated that the injury of the citizens was too incidental or remote to create standing to sue.

Acceptance of the *ultimate* consumer as plaintiff in an antitrust action has been less enthusiastic. One of the few cases to grant standing to an *ultimate* consumer is *In Re Master Key Antitrust Litigation*, 1973 Trade Cas. ¶74,680 (D. Conn. 1973). This is not to say that the arguments of ultimate consumers are entirely without merit, or that successful arguments made on behalf of other indirect consumers are in no way applicable to ultimate consumers The Court merely notes that, based upon legal precedent, ultimate consumers have rarely been granted standing to sue as distinguished from other indirect consumers.

The Seventh Circuit stated its position as to ultimate consumers in *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co.*, 315 F.2d 564 (7th Cir. 1963). This was an antitrust suit brought by a utility against a manufacturer of electrical equipment, charging conspiracy to fix prices. The State of Illinois sought to intervene as plaintiff on behalf of consumers of electrical energy. In denying intervention, the Court said:

> Could the State of Illinois bring a direct action against defendants? The answer is "no", because there was no direct proximate impact of the conspiracies on the consumers. The impact on them was remote and took the shape of allegedly higher rates paid for utility services—rates established as legal by the Illinois Commerce Commission. Although these rates may be determined to have been unreasonable because of conspiratorially fixed equipment costs which went into the basic rate structure, that is another issue not cognizable in these antitrust actions, 315 F.2d at 567.

The Seventh Circuit's holding that the injury to the consumer was too remote to grant standing to sue is binding upon this Court. This Court therefore holds that, as to *ultimate* consumers, their injuries are too remote and consequential to provide legal standing to sue against the alleged antitrust violator.

Defendants next move for summary judgment against all plaintiffs who have made direct purchases from non-defendants. Defendants argue that plaintiffs have alleged purchases only from defendants, and that non-defendants from whom purchases were made are not alleged to be conspirators.

Where a horizontal conspiracy is charged and proven, a defendant is liable for all damages sustained by reason of sale at non-competitive prices by all conspirators, *whether named as defendants or not.* Further, case law supports the proposition that a defendant would be liable for damages suffered as a result of purchases from non-conspirators who nevertheless charged prices identical with or close to those of their conspiring competitors. *Well Products Co.* v. *National Gypson Co.*, 357 F. Supp. 832 (N.D. Cal. 1973); *State of Washington* v. *American Pipe & Construction Co.*, 280 F. Supp. 802 (W.D. Wash. 1968).

Defendants are granted summary judgment against all non-direct purchasers of concrete block that constitute ultimate consumers as defined in this opinion. Defendants' motion for summary judgment as to direct purchasers from non-defendants is denied.

ENTER:

/s/ *Alfred Y. Kirkland,* Judge

DATED: April 28, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 73 C 2427
	)	
AMPRESS BRICK CO., INC., et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

April 28, 1975

Enter Memorandum Opinion and Order.

Defendants are granted summary judgment against all nondirect purchasers of concrete block that constitute ultimate consumers as defined in this opinion. Defendants' motion for summary judgment as to direct purchasers from non-defendants is denied.

/s/ *Kirkland, J.*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 73 C 2427
	)	
AMPRESS BRICK CO., INC., et al.,	)	
	)	
	)	
Defendants.	)	

ORDER FOR FINAL JUDGMENT
May 6, 1975

On motion of plaintiffs for entry by the court of an order for final judgment:

On motion of defendants for summary judgment, Ordered that all plaintiffs who are non-direct purchasers and who are ultimate consumers as defined in court's opinion of April 28, 1975 are hereby dismissed from the action. Enter Order of Final Judgment against all such plaintiffs, pursuant to Rule 54(b), F.R.C.P.

/s/ Kirkland, J.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 75-1561

STATE OF ILLINOIS, et al.,

Plaintiffs-Appellants,

vs.

AMPRESS BRICK COMPANY, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

---

JUDGMENT
June 22, 1976

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED in so far as it grants summary judgment on Counts I and II against indirect purchasers of concrete block, with costs to plaintiffs-appellants, in accordance with the opinion of this court filed this date.

Supreme Court, U. S.
FILED
DEC 22 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petition for Writ of Certiorari Filed September 17, 1976
Certiorari Granted November 8, 1976

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In the
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 73 C 2427

THE STATE OF ILLINOIS, et al.,

Plaintiffs,

v.

AMPRESS BRICK COMPANY, INC.,
et al.,

Defendants.

RELEVANT DOCKET ENTRIES

1973

September 20. Filed complaint. . . .

November 13. Filed Defendants' first set of interrogatories to plaintiff, State of Illinois.

1974

July 10. Filed plaintiffs' notice to present motion to file amended complaint instanter and the first amended complaint.

July 16. Enter order dated July 11, 1974. Motion to file first amended complaint instanter granted leave to plaintiffs to file objections or answers to interrogatories by September 4, 1974. Cause continued to September 10, 1974 for status. Mailed notices 7-12-74.

November 14. Filed plaintiffs' answers to interrogatories 18 and 19 propounded by defendants.

November 25. Enter order dated November 21, 1974: By December 20, 1974, defendants shall file motions with supporting memorandum to dismiss on grounds that indirect purchasers have no standing to sue and that the Attorney General of Illinois has not been authorized to bring suit in the names of public entities specifically named as plaintiffs. Plaintiffs to file answering memorandum by January 20, 1975. Defendants to reply by February 5. Plaintiffs shall answer by January 10, 1975, defendants motion to dismiss plaintiffs who failed to answer defendants interrogatories of November 13, 1973. Additional questionnaires will be made available for inspection and copying on December 20, 1974. On January 8, 1975, the parties shall meet to discuss defendants objections to plaintiffs interrogatories First Set, dated October 30, 1974 and plaintiffs request for production of documents, dated November 8, 1974. Defendants objections, if any, to these discovery requests shall be filed by January 15, 1975, and all requests to which objections are not made shall be answered by January 24, 1975. By agreement of the parties claims filed in connection with the settled cases (Nos. 73 C 1082, 73 C 1278, 73 C 1458, 74 C 652) shall be made available to plaintiffs for inspection and copying. The next pre-trial conference will be held on February 26, 1975 at 4:30 P.M. Mailed notices 11-25-74.

December 23. Enter order dated December 20, 1974. By January 6, 1975, defendants shall file their motion with supporting memorandum to dismiss on grounds that indirect purchasers have no standing to sue. Plaintiffs to file answering memorandum by February 6, 1975. Defendants to reply by February 21, 1975. Additional questionnaires or answers on interrogatories will be furnished by

plaintiffs on January 10, 1975. On January 17, 1975, the parties shall meet to discuss all presently outstanding discovery requests. Objections, if any, to all presently outstanding discovery requests, shall be filed by January 31, 1975, and all production of documents and answers to interrogatories not objected to shall be accomplished by February 14, 1975.—Except to the extent herein stated, all dates shall remain as set forth in the court's order of November 21, 1974. Mailed notices 12-23-74.

1975

January 6. Filed defendants' motion for partial summary judgment. Filed defendants' memorandum in support of motion for partial summary judgment.

January 13. Filed plaintiffs' notice of filing supplemental answers to defendants first set of interrogatories and plaintiffs' memorandum responding to defendants rule 37 motion to dismiss. Filed plaintiffs' supplemental answers to defendants' first set of interrogatories.

February 4. Filed plaintiffs' memorandum in opposition to defendants' motion for partial summary judgment.

February 28. Filed defendants' reply memorandum in support of motion for partial summary judgment.

April 30. Enter order dated April 28, 1975. Enter Memorandum Opinion and order-Draft. Defendants are granted summary judgment against all non-direct purchasers of concrete block that constitute ultimate consumers as defined in this opinion. Defendants' motion for Summary Judgment as to direct purchasers from non-defendants is denied. Mailed notices and copy of order 4-29-75.

May 2. Filed plaintiffs motion for entry of an order for final judgment.

Relevant Docket Entries

May 7. Enter order dated May 6, 1975: On motion of plaintiffs for entry of by the court of an order for final judgment. On motion of defendants for summary judgment ordered that all plaintiffs who are non-direct purchasers and who are ultimate consumers as defined in courts opinion of April 28, 1975 are hereby dismissed from the action. Enter order of final judgment against all such plaintiffs pursuant to Rule 54(b) F.R.C.P. (DRAFT). Mailed notices 5/7/75.

May 9. Filed plaintiffs notice of appeal with service list attached. ($5.00 paid)

1976

November 18. Enter order dated November 17, 1976; it is indicated to this Court that the Supreme Court granted certiorari and case has been docketed for oral argument February, 1977. Ordered that status report date of Tuesday, March 8, 1977. Notices mailed 11-18-76.

Relevant Docket Entries

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

THE STATE OF ILLINOIS, et al.,

Plaintiffs,

v.

AMPRESS BRICK COMPANY, INC., et al.,

Defendants.

1975

June 23. Filed.

1976

June 22. Entered final judgment order REVERSING in so far as it grants summary judgment on Counts I and II against indirect purchasing of concrete block, with costs to appellants. Filed opinion by Judge Cummings.

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE STATE OF ILLINOIS, its departments, divisions and agencies, and the municipalities and political subdivisions organized under the authority of the State and located in the Greater Chicago Area as set forth in attached Schedule A and Edward Hospital and Harvard Community Memorial Hospital as plaintiffs and as representatives of a class of private hospitals in part supported by public funds,

Plaintiffs,

v.

AMPRESS BRICK COMPANY, INC., AMERICAN BRICK COMPANY, ANJO, INC., E. L. RAMM COMPANY, CHICAGO BLOCK CO., INC., ILLINOIS BRICK COMPANY, HEIGHTS BLOCK, INC., NORTHFIELD BLOCK CO., VALLEY BLOCK & SUPPLY COMPANY, JOLIET CONCRETE PRODUCTS, INC., and JOSEPH METZ & SONS, INC.,

Defendants.

CIVIL ACTION NO. 73 C 2427

FIRST AMENDED COMPLAINT

Plaintiffs herein, by their attorney William J. Scott, Attorney General of Illinois, bring this civil action against the above named defendants for injunctive relief and for treble damages due to defendants' violations of the antitrust laws of the United States, and demanding a jury trial, allege as follows:

COUNT I

JURISDICTION AND VENUE

1. This complaint is filed and this action instituted under Sections 4 and 16 of the Clayton Act, (15 U.S.C. §15 and 26) for injunctive relief and to recover damages which the plaintiffs have sustained due to the violations by the defendants herein alleged under Section 1 of the Sherman Act.

2. Each of the defendants named in this complaint maintains an office, transacts business, or is found within the Northern District of Illinois, and each of said defendants is subject to service of process. Many of the unlawful acts done in formation or effectuation of the combination and conspiracy hereinafter alleged have been performed within the Northern District of Illinois. The interstate trade and commerce described hereinafter is carried on, in part, within the Northern District of Illinois.

PLAINTIFFS

3. The State of Illinois is one of the fifty sovereign states of the United States and is proceeding here on its own behalf, its departments, divisions and agencies and, pursuant to the authority contained in 38 *Illinois Revised Statutes*, Section 60-7.8 (1969), on behalf of all municipalities and political subdivisions organized under the authority of the State and located in the Greater Chicago Area, set forth in the attached Schedule A, that have either purchased or directly or indirectly paid for concrete block and have sustained damages as a result of the combination and conspiracy and violations of the federal antitrust laws herein alleged.

DEFENDANTS

4. The following companies named herein as defendants, manufactured, distributed and sold concrete block in the Greater Chicago Area during the period covered by this complaint:

(a) AMPRESS BRICK COMPANY, INC., is an Illinois corporation, with its principal place of business in Des Plaines, Illinois.

(b) AMERICAN BRICK COMPANY is a Delaware corporation, with its principal place of business in Chicago, Illinois.

(c) ANJO, INC., was an Illinois corporation which suffered involuntary dissolution by the Secretary of State for failure to file an annual report on June 20, 1973. Its principal place of business was in Chicago, Illinois.

(d) E. L. RAMM COMPANY is an Illinois corporation, with its principal place of business in La-Grange, Illinois.

(e) CHICAGO BLOCK CO., INC., is an Illinois corporation, with its principal place of business in Chicago, Illinois.

(f) ILLINOIS BRICK COMPANY is an Illinois corporation, with its principal place of business in Chicago, Illinois.

(g) HEIGHTS BLOCK, INC., is an Illinois corporation, with its principal place of business in Chicago, Illinois.

(h) NORTHFIELD BLOCK COMPANY is an Illinois corporation, with its principal place of business in Mundelein, Illinois.

(i) VALLEY BLOCK & SUPPLY COMPANY is a Delaware corporation, with its principal place of business in Elgin, Illinois.

(j) JOLIET CONCRETE PRODUCTS, INC., is a Delaware corporation, with its principal place of business in Joliet, Illinois.

(k) JOSEPH METZ & SONS, INC., is a Delaware corporation, with its principal place of business in Lyons, Illinois.

CO-CONSPIRATORS

5. Various persons not made defendants in this complaint, including an informal association of concrete block producers to which all of the corporate defendants belonged and other persons engaged in the production and sale of concrete block in the Greater Chicago Area, have participated as co-conspirators in the violation alleged herein and performed acts and made statements in furtherance thereof.

DEFINITIONS

6. As used herein, the term:

(a) "Concrete block" means a mixture of cement, water and aggregates, with or without the inclusion of other materials, which are molded and formed by machine into units for use primarily in the building construction business;

(b) "Greater Chicago Area" means the area containing and consisting of Boone, DeKalb, Grundy, Kankakee, Kendall, LaSalle, Lake, McHenry, Cook, Kane, DuPage and Will Counties in Illinois; Lake and Porter Counties in Indiana; and Kenosha County in Wisconsin; and

(c) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity.

NATURE OF TRADE AND COMMERCE

7. With the exception of the American Brick Company, all of the defendants have been engaged in the production of concrete block in the Greater Chicago Area during all or part of the period of the violation alleged herein. American Brick Company purchases concrete block for resale primarily from its production affiliate, Carey Brick Com-

pany. During all or part of the period covered by this complaint, the defendants have sold concrete block primarily to masonry contractors in the Greater Chicago Area on the basis of written or oral price quotations. Said customers use concrete block in the construction of an addition to buildings including hospitals, schools and other public buildings.

8. The defendants' aggregate gross sales of concrete block in the Greater Chicago Area in 1970 were approximately $12 million. As a group, the defendants accounted for most of the concrete block produced in the Greater Chicago Area during the period here involved.

9. Substantial quantities of essential ingredients used in producing concrete blocks are regularly shipped into the State of Illinois to persons, including the defendants and co-conspirators, from sources located outside of the State of Illinois.

10. Substantial quantities of concrete block produced by persons, including the defendants and co-conspirators, are produced in plants located in the State of Illinois and are sold and delivered regularly and continuously from said plants to customers located in the States of Indiana and Wisconsin.

OFFENSES CHARGED

11. Since at least 1969, the exact date being unknown to the plaintiffs, and continuing thereafter up to the date of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in the sale of concrete block in the Greater Chicago Area, in violation of Section 1 of the Sherman Act, (15 U.S.C. § 1).

12. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, a purpose of which has been to raise, fix and stabilize the price of concrete block in the Greater Chicago Area.

EFFECT OF COMBINATION AND CONSPIRACY

13. The aforesaid combination and conspiracy has had the following effects:

(a) Prices for concrete block have been increased in the Greater Chicago Area.

(b) Prices for concrete block have been artificially raised, fixed and are at non-competitive levels in the Greater Chicago Area.

(c) Price competition in the sale of concrete blocks in the Greater Chicago Area has been restrained and suppressed.

FRAUDULENT CONCEALMENT

14. The State of Illinois, its municipalities and political subdivisions organized under State authority had no knowledge of the aforesaid combination and conspiracy, or of any fact which might have led to the discovery thereof, prior to the filing of a complaint by the United States of America, in the United States District Court, Northern District of Illinois, Eastern Division, against said defendants on April 19, 1973. Plaintiffs could not have discovered the alleged combination and conspiracy by the exercise of due diligence since the combination and conspiracy set forth herein had been fraudulently concealed by the defendants by various means and methods used to avoid the detection thereof.

15. By virtue of the fraudulent concealment, plaintiff asserts the tolling of any applicable statute or period of limitations affecting the rights of the plaintiffs.

16. During and throughout the period of the aforesaid conspiracy, the plaintiff state and the municipalities and political subdivisions organized under the authority of the state and located in the Greater Chicago Area have purchased directly or indirectly substantial quantities of concrete blocks from defendants. By reason of defendants' illegal conduct, such plaintiffs were compelled to pay and have paid substantially higher prices for such concrete blocks than they would have paid had defendants' combination and conspiracy not existed or occurred.

17. As a result of the illegal combination and conspiracy alleged herein, plaintiffs have been injured and financially damaged by the defendants in an amount in excess of $3 million.

COUNT II

18-19. Plaintiffs repeat and reallege Paragraphs 1 and 2 of Count I of the First Amended Complaint as Paragraphs 18 and 19 of this Count with the same force and effect as though set out herein in full.

20. Plaintiffs, Edward Hospital, Naperville, Illinois, and Harvard Community Memorial Hospital, McHenry, Illinois, both organized pursuant to the Illinois Hospital District Law, 23 *Ill. Rev. Stat.* §§1251 *et seq.,* bring this action on behalf of themselves and pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class consisting of all *private hospitals in part supported by public funds,* located in the Greater Chicago Area and that have either purchased or directly or indirectly paid for concrete block and have sustained damages as a result of the combination and conspiracy and violations of the federal antitrust laws herein alleged.

This class is so numerous that joinder of all its members is impractical. There are questions of law or fact common to the class. The claims or defenses of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately represent the interests of the class. Additionally, the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the various members of the class. The questions of law or fact common to the class predominate over any questions affecting individual members only. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

21-30. Plaintiffs repeat and reallege Paragraphs 4 through 13 of Count I of the First Amended Complaint as Paragraphs 21 through 30 of this Count with the same force and effect as though set out herein in full.

31. Neither plaintiff, Edward Hospital and Harvard Community Memorial Hospital, nor any other hospital included in the class of private hospitals, had knowledge of the aforesaid combination and conspiracy, or of any fact which might have led to the discovery thereof, prior to the filing of a complaint by the United States of America, in the United States District Court, Northern District of Illinois, Eastern Division, against said defendants on April 19, 1973. Plaintiffs could not have discovered the alleged combination and conspiracy by the exercise of due diligence since the combination and conspiracy set forth herein had been fraudulently concealed by the defendants by various means and methods used to avoid detection thereof.

32. By virtue of the fraudulent concealment, plaintiff asserts the tolling of any applicable statute or period of limitations affecting the rights of the plaintiffs.

33. During and throughout the period of the aforesaid conspiracy, the plaintiff hospitals located in the Greater Chicago Area have purchased directly or indirectly substantial quantities of concrete blocks from defendants. By reason of defendants' illegal conduct, such plaintiffs were compelled to pay and have paid substantially higher prices for such concrete blocks than they would have paid had defendants' combination and conspiracy not existed or occurred.

34. As a result of the illegal combination and conspiracy alleged herein, plaintiffs have been injured and financially damaged by the defendants in an amount which is presently undetermined. When said amount has been ascertained the court will be asked for leave to amend this complaint and insert said amount herein.

PRAYER

WHEREFORE, plaintiffs pray:

A. That the court adjudge and decree that the aforesaid combination and conspiracy, and the acts done in pursuance thereof, were and are in unlawful restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act;

B. That the court certify a class under Rule 23 of the Federal Rules of Court Procedure consisting of private hospitals as alleged in Paragraph 20 herein;

C. That plaintiffs and class members recover threefold the damages determined to have been sustained by each of them, and that joint and several judgments in their favor be entered against the defendants for such amounts;

D. That the defendants be enjoined from continuing the combination and conspiracy herein alleged, and from entering into any combination, conspiracy, agreement, understanding or concert of action having similar purposes or effects;

E. That the plaintiffs, and class members have such other, further and different relief as the nature of this case may require or as to the court shall seem just;

F. That the plaintiffs and class members recover from the defendants the costs of this suit and reasonable attorneys' fees incurred, the amounts to be fixed by the court as is provided in the federal antitrust laws.

Dated: July 9, 1974

STATE OF ILLINOIS, et al.
plaintiffs,

By: /s/ *William J. Scott*
William J. Scott
Attorney General

/s/ *John P. Meyer*
John P. Meyer

/s/ *Lee A. Freeman*
Lee A. Freeman

/s/ *Lee A. Freeman, Jr.*
Lee A. Freeman, Jr.
Special Assistant
Attorneys General

/s/ *D. Alan Harris*
D. Alan Harris

GRAHAM, MEYER, YOUNG, WELSCH
& MATON
4 West Seminary
Danville, Illinois 61832
(217) 443-0304

FREEMAN, FREEMAN & SALZMAN
Suite 3200—One IBM Plaza
Chicago, Illinois 60611
(312) 467-6540

Schedule A — First Amended Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)
Civil Action — No. 73 C 2427
SCHEDULE A

COUNTIES

Boone
Cook
DeKalb
DuPage
Grundy
Kane
Kankakee
Kendall
Lake
LaSalle
McHenry
Will

MUNICIPALITIES

Addison
Algonquin
Alsip
Antioch
Arlington Heights
Aurora
Barrington Hills
Barrington
Bartlett
Batavia
Beecher
Bellwood
Belvidere
Bensenville
Berkeley
Berwyn
Bloomingdale
Blue Island
Bolingbrook
Bourbonnais
Bradley
Braidwood
Bridgeview
Broadview
Brookfield
Buffalo Grove
Burnham
Burr Ridge
Calumet City
Calumet Park
Carol Stream
Carpentersville
Cary
Channahon
Chebanse
Chicago
Chicago Heights
Chicago Ridge
Cicero
Clarendon Hills

Schedule A — First Amended Complaint

Coal City
Country Club Hills
Countryside
Crest Hill
Crestwood
Crete
Crystal Lake
Darien
Deerfield
DeKalb
Des Plaines
Dixmoor
Dolton
Downers Grove
Earlville
East Chicago Heights
East Dundee
East Hazelcrest
Elburn
Elgin
Elk Grove Village
Elmhurst
Elmwood Park
Evanston
Evergreen Park
Flossmoor
Forest Park
Fox Lake
Fox River Grove
Frankfort Village
Franklin Park
Gardner
Geneva
Genoa
Glencoe
Glendale Heights
Glen Ellyn Village
Glenview
Glenwood
Grayslake
Gurnee
Hampshire
Hanover Park
Harvey
Harwood
Hazel Crest
Hickory Hills
Highland Park
Highwood
Hillside
Hinckley
Hinsdale
Hoffman Estates
Hometown
Homewood
Huntley
Inverness
Island Lake
Itasca
Joliet
Justice
Kankakee
Kenilworth
Kirkland
La Grange Park
La Grange

Lake Bluff
Lake Forest
Lake in the Hills
Lake Villa
Lakewood
Lake Zurich
Lansing
La Salle
Lemont
Libertyville
Lincolnshire
Lincolnwood
Lindenhurst
Lisle
Lockport
Lombard
Long Grove
Lynwood
Lyons
McHenry
Manhattan
Manteno
Marengo
Markham
Marseilles
Matteson
Maywood
Melrose Park
Mendota
Merrionette Park
Midlothian
Mokena
Momence
Montgomery
Morris
Morton Grove
Mount Prospect
Mundelein
Naperville
New Lenox
Niles
Norridge
North Aurora
North Barrington
Northbrook
North Chicago
Northfield
Northlake
North Riverside
Oakbrook Terrace
Oak Brook Village
Oak Forest
Oak Lawn
Oak Park
Oglesby
Olympia Fields
Orland Park
Oswego
Ottawa
Palatine
Palos Heights
Palos Hills
Palos Park
Park City
Park Forest South
Park Forest
Park Ridge
Peotone
Peru
Phoenix

Plainfield
Plano
Posen
Richmond
Richton Park
Riverdale
River Forest
River Grove
Riverside
Riverwoods
Robbins
Rockdale
Rolling Meadows
Romeoville
Roselle
Rosemont
Round Lake Beach
Round Lake Heights
Round Lake Park
Round Lake
St. Anne
St. Charles
Sandwich
Sauk Village
Schaumburg
Schiller Park
Seneca
Shorewood
Skokie
Sleepy Hollow
Somonauk
South Chicago Heights
South Elgin
South Holland
Steger
Stickney
Stone Park
Streamwood
Streator
Sugar Grove
Summit
Sycamore
Thornton
Tinley Park
Valley View
Vernon Hills
Villa Park
Warrenville
Wauconda
Waukegan
Wenona
Westchester
West Chicago
West Dundee
Western Springs
Westmont
Wheaton
Wheeling
Willowbrook
Willow Springs
Wilmette
Wilmington
Winfield
Winnetka
Winthrop Harbor
Wood Dale
Woodridge
Worth
Yorkville
Zion

Schedule A — First Amended Complaint

HOUSING AUTHORITIES

Aurora Housing Authority
Boone County Housing Authority
Chicago Housing Authority
Cicero Housing Authority
Cook County Housing Authority
DeKalb County Housing Authority
DuPage County Housing Authority
Elgin Housing Authority
Evanston Housing Authority
Grundy County Housing Authority
Joliet Housing Authority
Kankakee County Housing Authority
Kendall County Housing Authority
Lake County Housing Authority
Lansing Housing Authority
LaSalle County Housing Authority
McHenry County Housing Authority
North Chicago Housing Authority
Oak Park Housing Authority
Waukegan Housing Authority
Wheaton Housing Authority

SCHOOL DISTRICTS

Belvidere Community Unit 100
Belvidere, Illinois
North Boone Community Unit 200
Poplar Grove, Illinois
Alsip, Hazelgreen, and Oak Lawn
Community School District 126
Alsip, Illinois
Argo-Summit Community School District 104
Argo, Illinois

Schedule A — First Amended Complaint

Argo-Summit High School District 217
Argo, Illinois
Arlington Heights Community School District 25
Arlington Heights, Illinois
Arlington Heights High School Township 214
Mount Prospect, Illinois
Atwood Heights Community School District 125
Merrionette Park, Illinois
Avoca Community School District 37
Wilmette, Illinois
Barrington Community Consolidated School District 1
Barrington, Illinois
Barrington Community Consolidated School District 4
Barrington, Illinois
Bellwood Community School District 88
Bellwood, Illinois
Berkeley Community School District 87
Berkeley, Illinois
Berwyn (North) Community School District 98
Berwyn, Illinois
Berwyn (South) Community School District 100
Berwyn, Illinois
Blue Island Community School District 130
Blue Island, Illinois
Community High Schools District 218
Worth, Illinois
Common School 109
Justice, Illinois
Brookfield Community School District 95
Brookfield, Illinois
Burnham Community School District 154½
Chicago, Illinois
Calumet City Community School District 155
Calumet City, Illinois

Thornton Fractional High School Township 215
Calumet City, Illinois
Calumet City Community School District 156
Calumet City, Illinois
Hoover-Schrum Memorial 157
Calumet City, Illinois
Calumet Park Community School District 132
Calumet Park, Illinois
Chicago Heights Community School District 170
Chicago Heights, Illinois
Bloom Township High School Township 206
Chicago Heights, Illinois
Chicago Ridge Community School District 127½
Chicago Ridge, Illinois
Cicero Community School District 99
Cicero, Illinois
J. Sterling Morton High School Township 201
Cicero, Illinois
Country Club Hills Community School District 160
Country Club Hills, Illinois
Des Plaines Community Consolidated School District 62
Des Plaines, Illinois
Maine Township High School Township 207
Park Ridge, Illinois
Dolton Community School District 148
Dolton, Illinois
Dolton Community School District 149
Dolton, Illinois
East Chicago Heights Community School District 169
East Chicago Heights, Illinois
East Maine Community School District 63
Niles, Illinois

East Prairie Community School District 73
Skokie, Illinois
Community Consolidated School District 59
Arlington Heights, Illinois
Elmwood Park Community Unit 401
Elmwood Park, Illinois
Evanston Community Consolidated School District 65
Evanston, Illinois
Evanston High School Township 202
Evanston, Illinois
Evergreen Park Community School District 124
Evergreen Park, Illinois
Evergreen Park High School District 231
Evergreen Park, Illinois
Flossmoor Community School District 161
Flossmoor, Illinois
Forest Park Community School District 91
Forest Park, Illinois
Forest Ridge Community School District 142
Oak Forest, Illinois
Franklin Park Community School District 84
Franklin Park, Illinois
Leyden High School District 212
Franklin Park, Illinois
Glencoe Community School District 35
Glencoe, Illinois
Glenview Community Consolidated School District 34
Glenview, Illinois
Brookwood Community School District 167
Glenwood, Illinois
Harvey Community School District 152
Harvey, Illinois
Thornton Township High School Township 205
Harvey, Illinois

Harvey (West) Community School District 147
Harvey, Illinois
Hazel Crest Community School District 152½
Hazel Crest, Illinois
Highlands Community School District 106
LaGrange, Illinois
Hillside Community School District 93
Hillside, Illinois
Homewood Community School District 153
Homewood, Illinois
Homewood-Flossmoor High School District 233
Flossmoor, Illinois
Kenilworth Community School District 38
Kenilworth, Illinois
LaGrange Community School District 102
LaGrange Park, Illinois
Lyons Township High School Township 204
LaGrange, Illinois
LaGrange Community School District 105
LaGrange, Illinois
Lansing Community School District 158
Lansing, Illinois
Lemont Community Consolidated School District 113
Lemont, Illinois
Lemont High School Township 210
Lemont, Illinois
Lincolnwood Community School District 74
Lincolnwood, Illinois
Lindop (Broadview) Community School District 92
Broadview, Illinois
Lyons Community School District 103
Lyons, Illinois

Mannheim Community School District 83
Franklin Park, Illinois
Markham Community School District 144
Markham, Illinois
Matteson Community School District 162
Matteson, Illinois
Maywood Community School District 89
Maywood, Illinois
Proviso Township High School Township 209
Maywood, Illinois
Midlothian Community School District 143
Midlothian, Illinois
Bremen Community School District 228
Midlothian, Illinois
Morton Grove Community School District 70
Morton Grove, Illinois
Morton Grove (Golf) Community School District 67
Morton Grove, Illinois
Mount Prospect Community School District 57
Mount Prospect, Illinois
Niles Community School District 71
Niles, Illinois
Norridge Community School District 80
Norridge, Illinois
Ridgewood High School District 234
Norridge, Illinois
Northbrook Community School District 28
Northbrook, Illinois
Glenbrook High Schools Township 225
Glenview, Illinois
Northbrook Community School District 27
Northbrook, Illinois
Northbrook Community School District 30
Northbrook, Illinois

Komarek Community School District 94
North Riverside, Illinois
Sunset Ridge 29
Northfield, Illinois
Oak Lawn—Hometown Community School District 123
Oak Lawn, Illinois
Reavis High School Township 220
Burbank, Illinois
Oak Lawn (North Palos) Community School District 117
Oak Lawn, Illinois
Oak Lawn (Ridgeland) Community School District 122
Oak Lawn, Illinois
Oak Lawn High School District 229
Oak Lawn, Illinois
Oak Lawn (South Stickney) Community School District 111
Burbank, Illinois
Oak Park Community School District 97
Oak Park, Illinois
Oak Park—River Forest High School Consolidated School District 200
Oak Park, Illinois
Orlando Park Community School District 135
Orland Park, Illinois
Consolidated High School Consolidated School District 230
Palos Hills, Illinois
Palatine Community Consolidated School District 15
Palatine, Illinois
Palatine High Schools Township 211
Palatine, Illinois
Palos Heights Community School District 128
Palos Heights, Illinois
Palos Park Community Consolidated School District 118
Palos Park, Illinois

Park Forest Community School District 163
Park Forest, Illinois
Rich Township High School Township 227
Park Forest, Illinois
Park Ridge Community Consolidated School District 64
Park Ridge, Illinois
Patton Community School District 133
Riverdale, Illinois
Pennoyer Community School District 79
Norridge, Illinois
Pleasantdale Community School District 107
LaGrange, Illinois
Posen-Robbins Community School District 143½
Posen, Illinois
Prospect Heights Community School District 23
Prospect Heights, Illinois
Rhodes Community School District 84½
River Grove, Illinois
River Forest Community School District 90
River Forest, Illinois
River Grove Community School District 85½
River Grove, Illinois
Riverside Community School District 96
Riverside, Illinois
Riverside—Brookfield High School Township 208
Riverside, Illinois
River Trails Community School District 26
Mount Prospect, Illinois
Schaumburg Community Consolidated School District 54
Schaumburg, Illinois

Rosemont Community School District 78
Rosemont, Illinois
Sandridge Community School District 172
Chicago Heights, Illinois
Community Consolidated 168
Sauk Village, Illinois
Schiller Park Community School District 81
Schiller Park, Illinois
Sieden Prairie Community School District 159
Matteson, Illinois
Skokie Community School District 73½
Skokie, Illinois
Skokie (Fairview) Community School District 72
Skokie, Illinois
Skokie Community School District 69
Skokie, Illinois
Niles Township High School Township 219
Skokie, Illinois
Skokie Community School District 68
Skokie, Illinois
South Holland Community School District 150
South Holland, Illinois
South Holland Community School District 151
South Holland, Illinois
Steger Community School District 194
Steger, Illinois
Stickney Community School District 110
Chicago, Illinois
Sunnybrook Community School District 171
Lansing, Illinois
Thornton Community School District 154
Thornton, Illinois
Kirby Community School District 140
Tirley Park, Illinois

Arbor Park Community School District 145
Tinley Park, Illinois
Tinley Park Community School District 146
Tinley Park, Illinois
Union Ridge Community School District 86
Harwood Heights, Illinois
West Northfield Community School District 31
Northbrook, Illinois
Westchester Community School District 92½
Westchester, Illinois
Western Springs Community School District 101
Western Springs, Illinois
Wheeling Community Consolidated School District 21
Wheeling, Illinois
Willow Springs Community School District 108
Willow Springs, Illinois
Wilmette Community School District 39
Wilmette, Illinois
Winnetka Community School District 36
Winnetka, Illinois
New Trier High School Township 203
Northfield, Illinois
Worth Community School District 127
Worth, Illinois
Chicago Board of Education
Chicago, Illinois
DeKalb Community Unit 428
DeKalb, Illinois
DeKalb Northern Illinois University
DeKalb, Illinois
Genoa-Kingston Community Unit 424
Genoa, Illinois
Hiawatha Community Unit 426
Kirkland, Illinois

Hinckley—Big Rock Community Unit 429
Hinckley, Illinois
Malta Community Unit 433
Malta, Illinois
Sandwich Community Unit 430
Sandwich, Illinois
Shabbona Community Unit 425
Shabbona, Illinois
Somonauk Community Unit 432
Somonauk, Illinois
Sycamore Community Unit 427
Sycamore, Illinois
Waterman Community Unit 431
Waterman, Illinois
Addison Community School District 4
Addison, Illinois
Benjamin Community School District 25
West Chicago, Illinois
Bensenville Community School District 2
Bensenville, Illinois
Bloomingdale Community School District 13
Bloomingdale, Illinois
Bromberek Community School District 65
Lemont, Illinois
Butler Community School District 53
Oak Brook, Illinois
Carol Stream Community Consolidated School District 93
Wheaton, Illinois
Cass Community School District 63
Downers Grove, Illinois
Center Cass Community School District 66
Downers Grove, Illinois

Community Unit 204
Naperville, Illinois
Community Unit 204
Eola, Illinois
Darien Community School District 61
Darien, Illinois
Downers Grove Community School District 58
Downers Grove, Illinois
Downers Grove High Schools District 99
Downers Grove, Illinois
Elmhurst Community School District 46
Elmhurst, Illinois
Elmhurst Community School District 3
Elmhurst, Illinois
Elmhurst High Schools District 88
Villa Park, Illinois
Fenton High School District 100
Bensenville, Illinois
Glen Ellyn Community School District 41
Glen Ellyn, Illinois
Glen Ellyn High Schools Township 87
Glen Ellyn, Illinois
Glen Ellyn Community Consolidated School District 89
Glen Ellyn, Illinois
Gower Community School District 62
Clarendon Hills, Illinois
Granger Community Consolidated School District 90
Naperville, Illinois
Hinsdale Community Consolidated School District 181
Hinsdale, Illinois
Hinsdale High Schools Township 86
Hinsdale, Illinois
Itasca Community School District 10
Itasca, Illinois

Keeneyville Community School District 20
Roselle, Illinois
Lake Park High School District 108
Roselle, Illinois
Lisle Unit 202
Lisle, Illinois
Lisle High School Unit 202
Lisle, Illinois
Lombard Community School District 44
Lombard, Illinois
Maercker Community School District 60
Clarendon Hills, Illinois
Marquardt Community School District 15
Lombard, Illinois
McAuley Community School District 27
West Chicago, Illinois
Medinah Community School District 11
Medinah, Illinois
Lake Park High School District 108
Roselle, Illinois
Naperville Unit 203
Naperville, Illinois
Naperville High School District 203
Naperville, Illinois
Palisades Community Consolidated School District 180
Hinsdale, Illinois
Puffer and Hefty Community School District 69
Downers Grove, Illinois
Queen Bee Community School District 16
Glen Ellyn, Illinois
Roselle Community School District 12
Roselle, Illinois
Salt Creek Community School District 48
Villa Park, Illinois

Villa Park Community School District 45
Villa Park, Illinois
West Chicago Community School District 33
West Chicago, Illinois
West Chicago High School District 94
West Chicago, Illinois
Westmont Unit 201
Westmont, Illinois
Wheaton Unit 200
Wheaton, Illinois
Wheaton High Schools Unit 200
Wheaton, Illinois
Winfield Community School District 34
Winfield, Illinois
Wood Dale Community School District 7
Wood Dale, Illinois
Woodridge Community School District 68
Woodridge, Illinois
Braceville Community School District 75
Braceville, Illinois
Coal City Community Unit 1
Coal City, Illinois
Gardner Community Consolidated School District 72C
Gardner, Illinois
Gardner — S. Wilmington Township High School 73
Gardner, Illinois
Goodfarm Community Consolidated School District 35C
Dwight, Illinois
Kinsman Community Consolidated School District 7C
Kinsman, Illinois
Mazon Community Consolidated School District 40C
Mazon, Illinois
Mazon High School Township 97
Mazon, Illinois

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Minooka Community Consolidated School District 201
Minooka, Illinois
Minooka High School District 111
Minooka, Illinois
Morris Community School District 54
Morris, Illinois
Morris High School District 101
Morris, Illinois
Nettle Creek Community Consolidated School District 240
Morris, Illinois
Saratoga Community Consolidated School District 60C
Morris, Illinois
South Wilmington Consolidated School District 74
South Wilmington, Illinois
Verona Community Consolidated School District 10C
Verona, Illinois
Aurora (East) Community Unit 131
Aurora, Illinois
Aurora (West) Community Unit 129
Aurora, Illinois
Batavia United School District 101
Batavia, Illinois
Burlington Community Unit 301
Burlington, Illinois
Carpentersville — Dundee Community Unit 300
Dundee, Illinois
Elgin United School District 46
Elgin, Illinois
Geneva Community Unit 304
Geneva, Illinois
Maple Park — Kaneland Community Unit 302
Maple Park, Illinios

Schedule A — First Amended Complaint

St. Charles Community Unit 303
St. Charles, Illinois
Bourbonnais Elementary Community School District 53
Bourbonnais, Illinois
Bradley Elementary Community School District 61
Bradley, Illinois
Bradley — Bourbonnais High School District 307
Bradley, Illinois
Grant Park Community Unit 6
Grant Park, Illinois
Herscher Community Unit 2
Herscher, Illinois
Kankakee School District 111
Kankakee, Illinois
Manteno Community Unit 5
Manteno, Illinois
Momence Community Unit 1
Momence, Illinois
Pembroke Community Consolidated School District 259
Hopkins Park, Illinois
R.U.C.E. Reddick Community Unit 3
Reddick, Illinois
St. Anne Community Consolidated School District 256
St. Anne, Illinois
St. Anne High School District 302
St. Anne, Illinois
St. George Community Consolidated School District 258
Bourbonnais, Illinois
Wiechert Community Consolidated School District 262
St. Anne, Illinois
Lisbon Community Consolidated School District 90
Newark, Illinois

Newark High School District 18
Newark, Illinois
Newark Grade School Community Consolidated School District 66
Newark, Illinois
Oswego Community Unit 308
Oswego, Illinois
Plano Community Unit 88
Plano, Illinois
Yorkville Community Unit 115
Yorkville, Illinois
Antioch Community Consolidated School District 34
Antioch, Illinois
Antioch High School District 117
Antioch, Illinois
Aptakisic — Tripp Community Consolidated School District 102
Prairie View, Illinois
Avon Center Community School District 47
Lake Villa, Illinois
Bannockburn Community School District 106
Bannockburn, Deerfield, Illinois
Barrington Consolidated High School District 224
Barrington, Illinois
Beach Park Community Consolidated School District 3
Zion, Illinois
Big Hollow Community School District 38
Ingleside, Illinois
Deerfield Community School District 109
Deerfield, Illinois
Diamond Lake Community School District 76
Mundelein, Illinois

Emmons Community School District 33
Antioch, Illinois
Fox Lake Community School District 114
Fox Lake, Illinois
Fremont Community School District 79
Mundelein, Illinois
Grant Community High School District 124
Fox Lake, Illinois
Gavin Community School District 37
Ingleside, Illinois
Grass Lake Community School District 36
Antioch, Illinois
Grayslake Community Consolidated School District 46
Grayslake, Illinois
Grayslake High School District 127
Grayslake, Illinois
Gurnee Community School District 56
Gurnee, Illinois
Hawthorn Community Consolidated School District 73
Mundelein, Illinois
Highland Park Community School District 107
Highland Park, Illinois
Highland Park Community School District 108
Highland Park, Illinois
Highland Park High School Township 113
Highland Park, Illinois
Highwood — Highland Park Community School District 111
Highwood, Illinois
Kildeer Countryside Community Consolidated School District 96
Long Grove, Illinois

Lake Bluff Community School District 65
Lake Bluff, Illinois
Lake Forest School District 67
Lake Forest, Illinois
Lake Forest High School 115
Lake Forest, Illinois
Lake Villa Community Consolidated School District 41
Lake Villa, Illinois
Lake Zurich Community Unit 95
Lake Zurich, Illinois
Libertyville Community School District 70
Libertyville, Illinois
Libertyville High School District 128
Libertyville, Illinois
Lincolnshire — Prairie View Community School District 103
Lake Forest, Illinois
Lotus Community School District 10
Spring Grove, Illinois
Millburn Community Consolidated School District 24
Wadsworth, Illinois
Mundelein Community School District 75
Mundelein, Illinois
Mundelein High School Consolidated School District 120
Mundelein, Illinois
Newport Community Consolidated School District 11
Zion, Illinois
North Chicago Community School District 63
North Chicago, Illinois
North Chicago Community School District 64
North Chicago, Illinois
North Chicago High School District 123
North Chicago, Illinois

Oak Grove Community School District 68
Libertyville, Illinois
Rondout Community School District 72
Libertyville, Illinois
Round Lake Community Unit 116
Round Lake, Illinois
Spaulding Community School District 58
Waukegan, Illinois
Adlai E. Stevenson High School Consolidated School District 125
Prairie View, Illinois
Warren Township High School Township 121
Gurnee, Illinois
Wauconda Community Unit 118
Wauconda, Illinois
Waukegan Community Unit 60
Waukegan, Illinois
Wilmot Community School District 110
Deerfield, Illinois
Winthrop Harbor Community School District 1
Winthrop Harbor, Illinois
Woodland Community Consolidated School District 50
Gages Lake, Illinois
Zion Community School District 6
Zion, Illinois
Zion — Benton High School Township 126
Zion, Illinois
Deer Park Community Consolidated School District 82
Ottawa, Illinois
Dinmick Community Consolidated School District 175
LaSalle, Illinois
Eagle Community School District 43
Streator, Illinois

Earlville Community Unit 9
Earlville, Illinois
Freedom Community Consolidated School District 245
Earlville, Illinois
Grand Ridge Community Consolidated School District 95
Grand Ridge, Illinois
John F. Kennedy (Cedar Point) Community Consolidated School District 129
Cedar Point, Illinois
LaSalle Community School District 122
LaSalle, Illinois
LaSalle — Peru High School Township 120
LaSalle, Illinois
Leland Community Unit 1
Leland, Illinois
Lostant Community Consolidated School District 25
Lostant, Illinois
Lostant High School District 400
Lostant, Illinois
Marseilles United School District 155
Marseilles, Illinois
Mendota Community Consolidated School District 289
Mendota, Illinois
Mendota High School Township 280
Mendota, Illinois
Miller Township (Milton-Pope) Community Consolidated School District 210
Marseilles, Illinois
Oglesby Community Consolidated School District 125
Oglesby, Illinois
Ophir Community Consolidated School District 235
Triumph, Illinois

Ottawa Community School District 141
Ottawa, Illinois
Ottawa High School Township 140
Ottawa, Illinois
Otter Creek Community School District 56
Streator, Illinois
Peru Community School District 124
Peru, Illinois
Ransom (Allen) Community Consolidated School District 65
Ransom, Illinois
Rutland Community Consolidated School District 230
Ottawa, Illinois
Seneca Community Consolidated School District 170
Seneca, Illinois
Seneca High School Township 160
Seneca, Illinois
Serena Community Consolidated School District 265
Serena, Illinois
Serena High School District 390
Serena, Illinois
Sheridan Community School District 272
Sheridan, Illinois
Streator Community School District 45
Streator, Illinois
Streator High School Township 40
Streator, Illinois
Tonica Community Consolidated School District 79
Tonica, Illinois
Tonica High School District 360
Tonica, Illinois
Utica Community School District 135
Utica, Illinois

Wallace Community Consolidated School District 195
Ottawa, Illinois
Waltham Community Consolidated School District 185
Utica, Illinois
Wedron Community Consolidated School District 201
Wedron, Illinois
Cary Community Consolidated School District 26
Cary, Illinois
Crystal Lake Community Consolidated School District 47
Crystal Lake, Illinois
Crystal Lake — Grove High School District 155
Crystal Lake, Illinois
Fox River Grove Consolidated School District 3
Fox River Grove, Illinois
Harrison Community School District 36
Wonder Lake, Illinois
Harvard Community Unit 50
Harvard, Illinois
Hawthorn Community Consolidated School District 17
Marengo, Illinois
Hebron Community Unit 19
Hebron, Illinois
Huntley Community Consolidated School District 158
Huntley, Illinois
Johnsburg Community School District 12
McHenry, Illinois
Marengo Consolidated School District 140
Marengo, Illinois
Marengo High School District 154
Marengo, Illinois
McHenry Community Consolidated School District 15
McHenry, Illinois

McHenry High School District 156
McHenry, Illinois
Prairie Grove Community School District 46
Crystal Lake, Illinois
Richmond Consolidated School District 13
Richmond, Illinois
Richmond-Burton High School District 157
Richmond, Illinois
Ridgefield Community School District 48
Crystal Lake, Illinois
Riley Community Consolidated School District 18
Marengo, Illinois
Spring Grove Community School District 11
Spring Grove, Illinois
Union Consolidated School District 8
Union, Illinois
Woodstock Community Unit 200
Woodstock, Illinois
Beecher Community Unit 200U
Beecher, Illinois
Braidwood Community Consolidated School District 5C
Braidwood, Illinois
Chaney-Monge Community School District 88
Crest Hill, Joliet, Illinois
Channahon Community School District 17
Channahon, Illinois
Crete-Monee Community Unit 201U
Crete, Illinois
Custer Park Community Consolidated School District 44C
Custer Park, Illinois
Elwood Community Consolidated School District 203
Elwood, Illinois

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Fairmont Community School District 89
Lockport, Illinois
Frankfort Community Consolidated School District 157C
Frankfort, Illinois
Homer Community Consolidated School District 33C
Lockport, Illinois
Joliet School District 86
Joliet, Illinois
Joliet High School Township 204
Joliet, Illinois
Laraway Community Consolidated School District 70C
Joliet, Illinois
Lincoln Way High School District 210
New Lenox, Illinois
Lockport High Schools Township 205
Lockport, Illinois
Ludwig-Reed-Walsh Community School District 92
Lockport, Illinois
Manhattan Community School District 114
Manhattan, Illinois
Milne-Kevin Community School District 91
Lockport, Illinois
Mokena Community School District 159
Mokena, Illinois
New Lenox Community School District 122
New Lenox, Illinois
Peotone Community Unit 207U
Peotone, Illinois
Plainfield Consolidated School District 202
Plainfield, Illinois
Reed-Custer High School Township 206
Braidwood, Illinois

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Richland Community School District 88A
Joliet, Illinois
Rockdale Community School District 84
Joliet, Illinois
Summit Hill Community School District 161
Mokena, Illinois
Taft Community School District 90
Lockport, Illinois
Troy Community Consolidated School District 30C
Joliet, Illinois
Union Community School District 81
Joliet, Illinois
Valley View Community Unit 365U
Lockport, Illinois
Wheatland Consolidated School District 40C
Plainfield, Illinois
Wilmington-Lorenzo Community Unit 209U
Wilmington, Illinois

SCHEDULE A
(APPENDIX 1)

MUNICIPALITIES

Aroma Park
Bannockburn
Bedford Park
Big Rock
Bracerville
Buckingham
Cabery
Capron
Carbon Hill
Cortland
Dana
Diamond
East Brooklyn
Elwood
Essex
Forest View
Grand Ridge
Grant Park
Green Oaks
Golf
Hainesville
Harvard
Harwood Heights
Hebron
Hodgkins
Johnsburg
Kaneville
Kingston
Lakeland Park
Lakemoor
Leland
Leonore
Lisbon
Malta
Maple Park
Mazon
McCullom Lake
Minooka
Momence
Monee
Newark
Oakwood Hills
Popular Grove
Prospect Heights
Reddick
Rutland
Serena
Shabbona
Sheridan
South Wilmington
Spring Grove
Sunnyside
Symerton
Third Lake
Troy Grove
Union
Union Hill
Utica
Verona
Waterman
Wayne
Weston
Winthrop Harbor
Wonder Lake
Woodstock

SCHOOL DISTRICTS

Arbor Park School District
Oak Forest, Illinois
Ann Rutledge School District
Frankfort, Illinois
Barrington High School District
Barrington, Illinois
Belvidere School District
Belvidere, Illinois
Bridgeview School District
Oak Lawn, Illinois
Central Commission School District
Burlington, Illinois
Doctor School District 137
Orland Park, Illinois
Esmond School District
Esmond, Illinois
Golf School District
Morton Grove, Illinois
Lindop School District
Maywood, Illinois
Marion Hills School District 61
Westmont, Illinois
Minooka High School District
Minooka, Illinois
North Boone School District
Belvidere, Illinois
Northfield School District
Winnetka, Illinois
Richmond School District 157
Richmond, Illinois
Schiller Park School District
Franklin Park, Illinois

South Stickney School District
Oak Lawn, Illinois
Streater Woodland School District
Streater, Illinois
Westchester School District
Maywood, Illinois
West Naperville School District 204
Naperville, Illinois
Will County School District
Joliet, Illinois
Will County School District 101
Joliet, Illinois
Worth High School District 218
Worth, Illinois
Yorkville County School District
Yorkville, Illinois

HOSPITALS

Edward Hospital
Naperville, Illinois
Harvard Community Memorial Hospital
McHenry, Illinois

Transcript of Proceedings

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AMPRESS BRICK COMPANY, et al.,

Defendants.

No. 73 CR 312 — And Related Cases

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HON. WILLIAM J. BAUER, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Thursday, September 5, 1974, at the hour of 1:45 o'clock, p.m.

APPEARANCES:

Mr. Perry Goldberg
Mr. Robert Atkins
Mr. Richard Campbell
Mr. Gary Semner
Mr. Edward H. Hatton
Mr. Thomas W. Johnston
Mr. John Burke
Mr. George B. Collins
Mr. Lee A. Freeman

The Clerk: 72 CR 312, and related cases.

Mr. Freeman: I have a stipulation between the defendants and the State of Illinois with respect to extending the time within which to file our answer to interrogatories. The stipulation extends that time to October 15. The answers were due today, but the summer period made it very difficult to get answers to questionnaires that we sent out. This will enable us to do so. I will just hand it up, the stipulation and a minute order which will be sufficient.

The Court: Surely.

Mr. Atkins: If the Court please, we have heretofore submitted a revised draft of a settlement agreement, proposed settlement agreement, notice, sworn statement and claim forms for your Honor's consideration, the originals of which have now been tendered to you, given to the clerk this afternoon, if the Court please, for the same amount of $598,200 that was suggested the last time we were in court.

We have, as indicated previously, incorporated, we believe, your Honor's suggestions. We have sent the documents to counsel, Mr. Lee Freeman, in the other case, the State of Illinois case; and we have also submitted to your clerk, Judge, a proposed order relative to the notice to be sent to the class.

Mr. Freeman: Your Honor, Mr. Atkins did furnish me with a copy of the proposed settlement order and I have reviewed it and find that defendants and the plaintiffs in those cases have sought to modify their settlement order in accordance with the suggestions that you gave them a few weeks ago, with one very major exception. That was they have not changed the definition of the classes and, in consequence, have created a situation where approval of this settlement could very easily adversely prejudice and affect the State of Illinois and its public entities.

I have prepared a memorandum setting forth three points of view, and arguments in three categories. First, that the claims of the plaintiffs and class members in the State of Illinois case may be adversely affected. The point is that they have made an allocation of settlement funds presumably to resolve whatever damage claims the masonry and general contractors have with respect to all of their purchases of concrete block, without excluding purchases they may have made and utilized in public buildings.

The defendants have already announced to your Honor in chambers previously that they would raise the question of the right of the State of Illinois to recover at all, because of its position as not a direct purchaser and also they would raise the question of double and multiple recoveries.

If you will read the settlement even in its ambiguous form in this respect and the releases and covenants that they seek, it is clear the defendants on the basis of this settlement quite properly would claim that all of the purchases that were made by masonry and general contractors have now been resolved and whatever happens to that concrete block by the masonry contractors and general contractors in installing that brick in public buildings could no longer be the basis of a damage action.

We have made several suggestions: (1) A suggestion that the defendants specifically recite in the settlement agreement that the settlement does not include and shall not in any way affect or prejudice the claims asserted by government entities and hospitals supported in part by public funds, as contained in the State of Illinois case.

The Court: There has been no definition of the class in the State of Illinois case.

Mr. Freeman: What is that, your Honor?

The Court: There has been no definition in the State of Illinois case.

Mr. Freeman: In the State of Illinois case, your Honor, the plaintiffs consist of the State and enumerated public entities, plus a request for certification of a class.

The Court: That is the point I am talking about.

Mr. Freeman: (Continuing)—consisting of hospitals, in part. No, there has been no such certification.

The Court: Would it be intelligent to exclude from the settlement agreement the purported class or the classes ultimately defined in the State of Illinois case?

Mr. Freeman: That does make some sense. I mean, in other words, if we could achieve here an agreement to exclude from this settlement the claims of the State of Illinois and the public entities, I would rest a lot easier and not worry about the hospital situation until that class had been established and I would make my pitch on that.

I would also suggest, as a part of the settlement procedures here, that the Court in its ultimate approval order —and I have not seen the order that Mr. Atkins has handed up to the Court—but in its ultimate approval order approving the settlement, if you do approve the settlement, that you say that this settlement does not include and shall not in any way affect or prejudice the claims asserted by government entities and hospitals—but I would withdraw from that—as asserted in the State of Illinois case.

I have also made the suggestion that the class definition be modified, so that this point can be carried forward.

Secondly, I have noted that the possible inadequacy of the settlement amount should not result in future prejudice on the Illinois plaintiffs to fit their claims into the dollar parameters involved in the proposed settlement. We would rather not take an interest in the settlement at all and let it proceed. I think that the Court quite properly has a desire to achieve settlement in these complex cases and so do I. I am not involved with them and if their settlement is an inadequate one, that might redound to my benefit, except that I do not want their particular method of settlement to be a guide for the State of Illinois case.

We think we have made a resolution of the damage issue on a much higher level. I make that point only to preserve the position that I might have with the Court, rather than with anyone else, at a later stage when we are proceeding

with our discovery or with our settlement discussions or with the trial.

Then, finally, there are various principles that are included in the settlement agreement, for which court approval is sought, which may have an adverse precedential effect. So, for example, the allocation of settlement amounts to the masonry and general contractors. The State of Illinois takes the position that those classes or those people in the area and in the line of distribution suffered no damages; that they bought the concrete block and then sold it, in effect, in building contracts at a price that included the excess price resulting from the conspiracy, plus an add-on for overhead, profit and contingency. This case is a simple case in which to establish that particular principle: that in this instance the injury and damage resulted to the builder, to the public agency that was constructing the buildings, and the contractor himself actually benefited from the conspiracy, because he was able to add on a percentage on a higher cost of the concrete block which was also included in the contract.

Secondly, there is an evaluation of purchases during the period 1969 to '71 at one unit, and from '71 to '73 at a quarter unit. I don't recognize any difference in the damage problems that we have in this case, based upon this differentiation on a yearly basis, on two years of '69 to '71, as against '71 to '73.

It is in the settlement and it is not my doing; but, of course, the Court is going to consider that and approve, as a means of distribution of these funds among the class members, an evaluation or a weighting of purchases in '71 to '73 at one quarter the value of the purchases in '69 and '71; and, of course, we will contend when we present our

purchase data that purchases in '71 and '73 and maybe even in '74 were directly influenced by the conspiracy and there was damage incurred and it was of equal consequence as far as our recovery is concerned.

Finally, the claims of the owner-builders in their claim form appeared to be restricted to purchases of concrete block rather than to what actually happens in the case of builders, whether they are private builders or public builders: In most instances, they were injured because the concrete block was included in the construction project that they granted a contractor to build; and the purchases were not made directly and the word "purchases" may be a semantic problem that faced Mr. Goldberg in setting up his claim form. But I note the point, because in the case of the public entities, direct purchases are at a minimum. The public entities, by reason of their participation in building construction, were injured because the blocks that were utilized were supplied to them by contractors at a much higher price than would otherwise have been the case if there wasn't a conspiracy.

I think the problem that principally concerns me is this problem that I know the defendants will again raise when we get to the point of proving damages: that they have already paid a sum of money to the direct purchasers of the concrete block to be completely released by reason of those sales. That is what the settlement says: They are being released from all sales that they made to masonry and general contractors.

Now they would expect us then, I assume, to sue the masonry contractors and general contractors, which we do not propose to do. I think this conspiracy which resulted in the higher prices was engineered by the manufac-

turers and the general contractors and masonry contractors followed their normal business practices of taking that higher price, putting it in their bid and adding a percentage for overhead, contingencies and profits.

Mr. Goldberg: If I might, I would like to respond briefly to Mr. Freeman's statements.

For the record, I shall like to point out that we have an objection to the State of Illinois' standing in this matter, since they are not a party to the litigation. The objection, of course, is purely for the record.

Substantively, I have not yet had an opportunity to review Mr. Freeman's memorandum, since I was just handed a copy of it; but I believe his major objection comes to the definition of the settlement class, as defined in this settlement agreement.

We have attempted to exclude from this settlement and from the settlement agreement all of the parties represented or claimed to be represented by the State of Illinois. The definition in the case specifically would exclude all of such parties, including all hospitals supported, in whole or in part, by public funds.

The Court: What it leaves out, I suppose, is the unresolved question of what class is sought to be established in the State of Illinois case.

Mr. Goldberg: We have nothing to do with that action.

The Court: I know, but I am saying what is left out of the exclusionary provision of the proposed settlement is an undefined—

Mr. Goldberg: No, your Honor.

The Court: You mean you have defined the class for me?

Mr. Goldberg: No, no. What we have done is we have left out all of the hospitals that he is seeking to represent. So they are not in this proposed settlement class.

In other words, we walk our separate ways here.

In its conclusion, Mr. Freeman made much to-do about the fact that the defendants would raise the payments to masonry contractors and general contractors as a defense to his action. Though this may well be a defense in certain situations, that is not a defense in the situation before your Honor; because it is my understanding that the defendants are prepared to come forward and state that they will not raise the specific payment of moneys to these parties as a defense in the action brought by the State of Illinois.

I think Mr. Freeman's client has been amply protected and that any standing which he has is at that point fully expunged and any need for him to be present at any future proceedings I think has been fully covered and he is fully protected by such a statement.

Mr. Freeman: I would like to hear those statements from the defendants.

The Court: I am all atwitter myself, Mr. Freeman.

Mr. Burke: Good afternoon, your Honor. John Burke on behalf of the defendants.

Your Honor, Mr. Freeman's case, the State of Illinois case, is not affected in any manner by this settlement. He is in exactly the same position he was in on the date that he filed the case. Whether this settlement is approved or not approved, his case is unaffected. Specifically responding to Mr. Freeman's questions, the defendants will not take the position that merely because they paid masonry contractors and general contractors who purchased concrete block which was later sold or incorporated into a structure built and owned by the State of Illinois—merely

because we have paid those people, that the State of Illinois' claim has been released or extinguished. We will, however, maintain that the State of Illinois has not suffered damage recognizable under the appropriate statute; but that we will maintain, whether or not this settlement goes through; and the settlement will have no affect whatsoever on that defense.

I think that, as Mr. Freeman stated, he really has no objection. He would like the Court to recognize the settlement does not have any precedential value and we all know that. The defendants agree that anything your Honor does here, anything that the representatives for the classes which are settling agree to, has no affect on Mr. Freeman. If Mr. Freeman can show his clients were damaged in the amount of one hundred million dollars, the mere fact that Mr. Goldberg, Mr. Atkins, Mr. Campbell have settled for less will not affect the talents of Mr. Freeman to collect one hundred million dollars times three. I am quite confident of that.

Thank you.

Mr. Freeman: What Mr. Burke says is quite encouraging. I would like him to be able to say that either in the settlement agreement or in some formal communication to the Court. This is, of course, now an advance and something that I can live with.

The Court: I suggest, Mr. Freeman, that that play no part in the settlement agreement without some inclusion into their greater proposition; that is, that the State of Illinois case has no standing in this particular proceeding. I do think, however, that it would be intelligent, if you wish some discussion other than that which has been put on the record by an officer of this Court representing some

clients, which, I assume, would be binding upon his clients in the future, that Mr. Burke would address the same remarks to me in the form of a letter, it might satisfy your position.

Mr. Burke: Your Honor, so we do not have to come back before the Court again and so Mr. Freeman and I do not get into any dispute as to the terms of the letter, I think it would be appropriate if we could agree upon those terms.

What I would propose to write to the Court would be that the approval of the settlement by your Honor shall have no affect upon Mr. Freeman's State of Illinois case; and that the defenses that the defendants may later raise will not be hindered or aided by reason of this settlement and your Honor's hopeful approval thereof.

Mr. Freeman: I liked his first statement better, you see. I will have Mr. Roscoe Giles give it to me and then I will—

The Court: May I suggest this, Mr. Burke: Suppose we ask Mr. Giles now to prepare a transcript of your remarks, encompass them in a letter and sign it and send it and solve the problem.

Mr. Burke: Very well, your Honor.

The Court: I assume that will obviate all the objections then to the proposed settlement.

Mr. Freeman: Yes, because Mr. Burke made a very good statement, which he did not make in chambers; and I am satisfied that Mr. Giles has gotten it accurately and I will abide by that. But I would like his signature on it.

The Court: Subject to that letter coming in, I assume this would make the perusal of your objections to the settlement unnecessary by the Court.

Mr. Freeman: I will withdraw from this proceeding, as Mr. Goldberg has invited me to do. I have other things I want to do, but it was important that I—

The Court: Well, if you have been satisfied, I find nothing particularly that makes me dissatisfied about the order itself.

The sworn statement of claim is all right and the request for the exclusion is word for word, I think, pursuant to the suggestion.

I have not had an opportunity to digest any new material. I do not think there is any particular necessity for me to do so anymore. Subject to the letter we discussed just briefly, I would approve the settlement agreement as drafted.

Is there anything further?

Mr. Burke: No, your Honor, that is all. Thank you.

Mr. Goldberg: I believe we have a draft order that your Honor has before you entitled "Settlement Order."

The Court: "Settlement Order No. 1"?

Mr. Goldberg: Right.

The Court: When I receive the letter from Mr. Burke and peruse this—I have not seen Settlement Order No. 1. This is a case of first impression.

Mr. Goldberg: Yes, your Honor, because we prepared it this morning.

The Court: When I do read it, peruse it, and I have received Mr. Burke's letter, I will be happy to enter it.

Mr. Goldberg: Thank you, your Honor.

Mr. Burke: Thank you, your Honor.

Transcript of Proceedings

IN THE UNITED STATES DISTRICT COURT
NORTHERN DASTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

CERTIFICATE

I, Roscoe C. Giles, Jr., do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings had in the above-entitled cause before the HON. WILLIAM J. BAUER, one of the Judges of said Court, in his courtroom at Chicago, Illinois, on September 5, 1974.

/s/ *Roscoe C. Giles, Jr.*
Roscoe C. Giles, Jr.
Official Court Reporter
United States District Court
Northern District of Illinois

Letter to Hon. Wm. J. Bauer from John E. Burke

September 10, 1974

Honorable William J. Bauer
U.S. District Court Judge
219 South Dearborn
Room 2156
Chicago, Illinois 60604

Re State of Illinois v. Ampress Brick Company, Inc., et al.

Dear Judge Bauer:

This is to affirm the statements which the undersigned made on behalf of the defendants noted below during the hearing on September 5, 1974 in the Concrete Block litigation. Those defendants hereby affirm and agree that the settlement of the following cases: *Corona Construction Co., Inc.*, No. 73 C 1082; *Home Builders of America, Inc.*, No. 73 C 1278; *Mor-Well General Contractors, Inc.*, No. 73 C 1458 and *Normandy Hill, Inc.*, No. 74 C 652, shall have no effect whatsoever on, and be without prejudice to the State of Illinois case No. 73 C 2427. It is intended that the State of Illinois case will not be prejudiced by the settlement.

The defendants will not take the position that the alleged claims of the plaintiffs and the purported class members in the State of Illinois case have been released or in any way diminished because defendants have settled the claim of masonry contractors and general contractors who purchased Concrete Block which was later sold to, or incorporated into, a building, or structure built for and owned by the State of Illinois, or the public entities named as

Letter to Hon. Wm. J. Bauer from John E. Burke

plaintiffs, or the members of a purported hospital class, in part supported by public funds.

Defendants have and will continue to maintain that the State of Illinois, the public entities named as plaintiffs and the members of the purported hospital class have not suffered damages recognizable under the antitrust statutes. The settlement will have no effect on this defense, or any other defense which the defendants may raise.

Finally, defendants agree that this settlement shall have no precedential effect with respect to the State of Illinois case.

Respectfully submitted,
/s/ JOHN E. BURKE
JOHN E. BURKE
On behalf of the defendants in the above named cases to be settled, namely Ampress Brick Company, Inc., American Brick Company, E. L. Ramm Company, Chicago Block Co., Inc., Illinois Brick Company Heights Block, Inc., Northfield Block Co., SGM Corporation, Joliet Concrete Products, Inc., and Joseph Metz & Sons, Inc.

JEB:mfl
cc Lee Freeman, Sr., Esq.

First Set of Interrogatories

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CONCRETE BLOCK	)	No. 73 C 1082
	)	
ANTITRUST CASES	)	and related cases

STATE OF ILLINOIS INTERROGATORIES
FIRST SET

Pursuant to Rule 33 of the Federal Rules of Civil Procedure the plaintiffs in the case of *State of Illinois* v. *Ampress Brick Co., Inc.,* No. 73 C 1016, hereby direct the following interrogatories upon each defendant in Docket No. 73 C 1016 and request answers under oath within thirty (30) days of the date hereof.

Definitions

As used herein:

I. "Concrete block" means a mixing of cement, water and aggregates with or without the inclusion of other materials, which are molded and formed by machines into units for use primarily in the building construction business.

Time Period

Unless otherwise specified the answers requested herein include information for the period from January 1, 1959 to and including the date of these interrogatories, or referring or relating to such period. Each change in circumstance within that period is to be stated, with the date of such change.

First Set of Interrogatories

Geographic Area

The geographic area covered by these interrogatories is the "Greater Chicago Area" which is defined to mean the area containing and consisting of McHenry, Cook, Kane, DuPage, DeKalb, Grundy, Kankakee, LaSalle and Will Counties in Illinois; Lake and Porter Counties in Indiana and Kenosha County in Wisconsin.

Interrogatories

36(a) What were your gross annual sales of concrete block?

(b) What were your gross annual sales of each type of concrete block for which separate records are kept?

(Annual sales should be supplied on a calendar year basis including 1959 unless you are on a fiscal year basis; then supply the information for each fiscal year since the one ending in 1959.)

37. State the total number of individual purchase orders received by you for concrete block.

38. For each sale by you of concrete block:

(a) State your transaction order, invoice and/or other internal number or numbers;

(b) State the purchaser's order or other internal number or numbers;

(c) State the date of the sale;

(d) Identify the purchasers;

(e) If different than the purchaser, identify the masonry contractor;

(f) Identify by location, job name or other description the job for which such purchase was made;

(g) Describe each item purchased and for each such item state its sales price;

First Set of Interrogatories

(h) State the terms and conditions of sale;

(i) State the time and location of delivery for each item purchased;

(j) State the date or dates of billing for each item purchased;

(k) State the date when you received payment for each item purchased;

(l) State and describe any unusual circumstances, including but not limited to complaints, defective items, rejects, failure to pay.

39. Do you have any data of sales and prices of concrete block recorded on punched cards or other devices or business machine and if so, state what such records consist of and for what period they are available.

40. When sales are made of concrete block which are to be used on public projects or public entities, are you furnished with information indicating such sales as exempt from sales tax by reason of the use of such product on public projects by public entities?

41. State with respect to sales of concrete block used on public projects or by public entities:

(a) The number of such individual sales;

(b) Identify the purchaser and the dates of purchase;

(c) Identify the public project or public entity for which such concrete blocks were intended;

(d) State the gross dollar amount of concrete block sold for each individual public project or public entity;

(e) State the unit prices for each type of concrete block involved in such sale.

42. Identify each affidavit which you have filed in connection with a purchase by or a construction project for a

public entity and state the following separately for each such filing;

(a) the identity of your officer or employee who swore to each affidavit;

(b) the identity of the individual who directed the affiant to so swear; and

(c) describe the facts asserted in said affidavits.

43. Identify each report, other than those privileged by statute, which you have filed with (a) any trade association; (b) the Department of Commerce of the United States; or (c) the Department of Labor of the United States with regard to:

(i) Sales of concrete block;

(ii) Costs of production of concrete block;

(iii) Prices of concrete block.

44. Identify each company with which you are affiliated which manufactures, produces, sells or distributes concrete block, stating the nature of the affiliation, and identifying each agreement between you relating to the sale of concrete block.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)
73 C 2427

MOTION FOR PARTIAL SUMMARY JUDGMENT

Now come the defendants and move this Court for an order granting partial summary judgment against all of the parties listed on Schedule A and as to all claims listed on Schedule B.

The grounds for this motion are as follows:

1. This is a civil antitrust action brought by the State of Illinois on its own behalf and on behalf of all state governmental entities in the Greater Chicago area. (Amended Complaint ¶3.) The defendants are alleged to have violated Section 1 of the Sherman Act, 15 U.S.C. §1, by conspiring to fix the price of concrete block in the Greater Chicago area. (Amended Complaint ¶¶11-12.)

2. To date, Interrogatory answers have been furnished by 253 of the governmental entities. The interrogatory answers of the 249 entities listed on Schedule A show that none of these 249 entities bought concrete block directly from a defendant (see Answer to Question II) and none purchased concrete block pursuant to a pre-existing cost-plus contract (see Answer to Question IC). As a matter of law, these 249 entities cannot sue and recover for the alleged overcharge. Therefore, summary judgment against these 249 entities should be granted.

3. The City of Wheaton's interrogatory answers show that it had direct purchases from a defendant and three non-defendants (see Answer to Question II) and that it

had no indirect purchases pursuant to a pre-existing cost-plus contract (see Answer to Question IC). As a matter of law, the City of Wheaton cannot sue and recover for the purchases from the three non-defendants. Therefore, summary judgment as to those claims (listed on Schedule B) should be granted.

4. Of the 253 governmental entities who have answered defendants' interrogatories to date, four would remain in this suit. (See Schedule C.)

Dated: January 6, 1975

Respectfully submitted,

AMPRESS BRICK COMPANY, INC.
AMERICAN BRICK COMPANY
E. L. RAMM COMPANY
CHICAGO BLOCK CO., INC.
ILLINOIS BRICK COMPANY
HEIGHTS BLOCK, INC.
ANJO INC.
NORTHFIELD BLOCK CO.
VALLEY BLOCK & SUPPLY COMPANY
JOLIET CONCRETE PRODUCTS, INC.
JOSEPH METZ & SONS, INC.

By .....
One of the Attorneys for
Defendant Illinois
Brick Company

JENNER & BLOCK
One IBM Plaza
Suite 4400
Chicago, Illinois 60611
222-9350

SCHEDULE A

Adlai Stevenson High School, District No. 125
Allen Township School, District No. 65
Anna McDonald Schools, District 159
Antioch Community Consolidated School District No. 34
(Lists direct purchase from Aldy Block Co., Inc. which is not a defendant.)
Antioch Community High School
Arlington Heights Public Schools, District 25
Aurora Land Clearance Commission
Baunodelburn School, District 106
Big Hollow School, District 38
Board of Education, School District No. 103
Board of Education, School District No. 158, Lansing
Boone County
Borbonnais School, District No. 53
Bracewater Grade School, District No. 75
Bradley-Bourbonais High School, District No. 307
Bradley School
Berman Community High School, District No. 228
Brombeck School, District 65
Cass School, District 63
Chicago Housing Authority
Chicago Public Schools
City of Countryside
City of Des Plaines
City of Elmhurst
City of Geneva
City of Harvey
City of Highwood
City of Lake Forest
City of Melrose Park

City of Northlake
City of Oakbrook Terrace
City of Oak Forest
City of Ottawa
City of Woodstock
Coal City Community Unit, District No. One
Community Consolidated School District No. 15
Community Consolidated School District No. 21
Community Consolidated School District No. 59, Elk Grove Township Schools
Community Consolidated School District No. 64
Community Consolidated School District No. 181
Community High School District No. 128, Libertyville
Community High School, District No. 154
Community High School, District No. 155
Community High School, District No. 234, Ridgewood High School
Community School District 150, Belvidere
Community Unit School District No. 220
Community Unit School District No. 300, Dundee
Consolidated High School District 230, Palos Heights
Cook County
Cook County School District No. 104
County of DeKalb
County of Kane
Crystal Lake Community Consolidated Grade School, District No. 47
Darien Public Schools, District No. 61
Deer Park Community Consolidated District No. 82
Diamond Lake School District No. 76
Downers Grove Public Schools
DuPage County Health Department

Earlville Community Unit, District No. 9
Edward Hospital, Naperville
Elementary School District No. 96, Long Grove
Elmhurst Public Schools, Community Unit District No. 205
Elwood Community Consolidated School District No. 203
Evanston Township High School, District No. 202
Evergreen Park Community High School No, 231
Evergreen Park Public Elementary School, District No. 124
Fairmont School District No. 89
Fairview School District No. 72
Frankfort Public Schools, District 157 C
Franklin Park Public Schools, District No. 84
Fremont School District No. 79
Gardner Grade School, District No. 72C
Gaven Schools, District No. 37
Glencoe Public Schools, District No. 35
Glen Ellyn Elementary Schools, District No. 41
Glenview Public Schools, District No. 34
Golf School District No. 67
Grand Ridge Community Consolidated School, District No. 95
Grant Community High School, District No. 124
Grant Park Community Unit, District No. 6
Grayslake Community High School
Grundy County
Gurnee Grade Schools, District No. 56
Harvard Community Memorial Hospital
Hawthorn School, District No. 17
Hawthorne School, District No. 73, Mundelein
Herscher Community Unit, District No. 2
Hiawatha Community Unit No. 426
Hinckley—Big Rock School, District No. 429

Schedule A—Motion for Partial Summary Judgment

Homer Community Consolidated School District 33C
Homewood-Flossmoor Community High School, District 233
Homewood Public Schools
Housing Authority of the County of Cook
Housing Authority for the County of DeKalb
Housing Authority of Joliet
Housing Authority for LaSalle County
Housing Authority, Village of Oak Park
Huntley Consolidated School District 158
Indian Prairie, District No. 204
Itasca Public Schools, District No. 10
Joliet Township High Schools, District 204
J. Sterling Morton High School, No. 201
Kankakee County Housing Authority
Keeneyville Elementary School, District No. 20
Kirby School, District 140
Lake Bluff Park District
Lake Forest High Schools
Lake Park High School
Lake Villa Community Consolidated School, District No. 41
Leland Community School, District No. 1
Libertyville Public School, District No. 70
Lincoln Way Community High School, District 210
Lockport Township, District No. 205
Maine Township High School, District 207
Mannheim School, District No. 83
Manteno High School, District No. 5
Marengo Elementary School
Marquardt School, District No. 15
Marsailles Public School, District No. 155

Schedule A—Motion for Partial Summary Judgment

Mazon-Verona-Kinsman Community Unit, District No. 2
McHenry Community Consolidated School, District No. 15
McHenry Community High School, District No. 156
Medina Elementary, District No. 11
Millburn School, District No. 24
Miller Community Consolidated School, District No. 210
Minooka Community High School, District No. 111
Mokena Public Schools, District 159
Momence Community Unit School, District No. 1
Morton Grove Public Schools, District No. 70
Mount Prospect School, District No. 57
Mundelein Elementary School, District No. 75
(Lists direct purchase from Carlson and Kordas which is not a defendant.)
New Lenox School, District No. 122
North Chicago High School, District No. 123
North Palos Elementary Schools, District 117
Oak Lawn Community High School
Oak Lawn—Hometown School, District No. 123
Oak Park and River Forest High School, District No. 200
Ophir Community Consolidated School
Oswego Community Unit, District No. 308
Ottawa Elementary Schools, District No. 141
Ottawa High School, District No. 140
Otter Creek School, District No. 56
Palisades School, District No. 180
Patton School, District 133
Peotone Community Schools, District 207-U
Pennoyer School, District 79
Prairie Grove Community School, District No. 46
Richmond Consolidated Grade School
River Forest Public Schools, District No. 90
River Grove Public School, District No. 85½

Schedule A—Motion for Partial Summary Judgment

Riverside Public Schools, District No. 96
Rockdale Public School, District 84
Roselle School, District No. 15
Schaumburg Community Consolidated School, District 54
School District No. 13, Bloomingdale
School District No. 16, Glen Ellyn
School District No. 28, Northbrook
School District No. 44, Lombard
School District No. 45, Villa Park
School District No. 64, North Chicago
School District No. 67, Lake Forest
School District No. 68, Woodridge
School District No. 72, Libertyville
School District No. 78, Rosemont
School District No. 88, Bellwood
School District No. 88, Crest Hill
School District No. 89, Glen Ellyn
School District No. 93, Carol Stream
School District No. 94, Komarek Schools
School District No. 100, Berwyn
School District No. 105, LaGrange
School District No. 108, Highland Park
School District No. 110, Stickney Township
School District No. 111, Burbank
School District No. 126, Worth
School District No. 127½, Chicago Rdge
School District No. 131, Aurora (lists direct purchases from Ancutt's which is not a defendant.)
School District No. 147, Harvey
School District No. 149, Dolton
School District No. 152, Harvey
School District No. 157, Calumet City

Schedule A—Motion for Partial Summary Judgment

School District No. 169, East Chicago Heights
School District No. 170, Chicago Heights
School District No. 1153, Oak Brook
Serena Community Schools, Districts 265 and 390
Somonauk Community Unit School No. 432
Spring Grove Community School, District No. 11
St. Anne Community High School, District No. 302
State of Illinois, School Districts
St. Charles Community School, District No. 303
Steger School District 194
St. George Community School, District No. 258
Streator Elementary School, District No. 45
Summit Hills Public Schools, District No. 161
Sunset Ridge School, District No. 29
Sycamore Community Unit School, District No. 247
Thornton Fractional Township High School, District No. 215
Town of Cicero
Township High School, District No. 113, Highland Park
Township High School, District No. 214
Union Ridge School, District No. 86
Union School, District No. 81
Valley View Community Unit School, District No. 356-U
Village of Aroma Park
Village of Algonquin
Village of Bellwood
Village of Bensenville
Village of Brookfield
Village of Buffalo Grove
Village of Calumet Park
Village of Carol Stream
Village of Clarendon Hills
Village of Elk Grove Village
Village of Gardner
Village of Glenview

Schedule A—Motion for Partial Summary Judgment

Village of Hanover Park
Village of Hinsdale
Village of Hoffman Estate
Village of Lake Villa
Village of Lake Zurich
Village of Lincolnwood
Village of Morton Grove
Village of Mundelein
Village of Norridge
Village of Northbrook
Village of Oak Brook
Village of Oak Lawn
Village of Olympia Fields
Village of Oswego
Village of Poplar Grove
Village of Riverdale
Village of Schaumburg
Village of Stickney
Village of Summit
Village of Western Springs
Village of Wheeling
Village of Wilmette
Wauconda Community School, District No. 118
Western Springs Public School, District No. 101
Will County
Will County, Department of Highways
Willow Springs School, District No. 108
Winthrop Harbor School, District No. 1
Wood Dale School, District No. 7
Woodland Community Consolidated District No. 50
Worth Elementary School, District No. 127
Yorkville Community Unit, District No. 115
Zion Bethune Township High School, District No. 126
Zion Elementary Schools, District No. 6

Schedules B & C—Motion for Partial Summary Judgment

SCHEDULE B

Governmental Entity	*Direct Purchase From*
City of Wheaton	Elmhurst Chicago Stone Material Service Corp. Fortress Concrete Block

SCHEDULE C

Claimants Remaining in Suit

Governmental Entity	*Direct Purchase From*
For the following 3 claimants, all direct purchases were made from defendants.	
City of Chicago Department of Public Works	Ampress Brick (2) Chicago Block
City of Hometown	Illinois Brick Co.
Maercher School District No. 60	E. L. Ramm Co.
For the following claimant, the only direct purchases from a defendant are listed below. Other direct purchases made by this claimant were not from defendants.	
City of Wheaton	E. L. Ramm Co. (2)

(CERTIFICATE OF SERVICE)

Plaintiffs' Supplemental Answer to Interrogatories

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, et al., Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	
	)	NO. 73 C 2427
AMPRESS BRICK COMPANY, Defendants.	)	

PLAINTIFFS' SUPPLEMENTAL ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Pursuant to the court order of December 20, 1974, the State of Illinois and represented public entities, herewith submit the attached verified Schedule I tabulation as supplemental answers to defendants First Set of Interrogatories.

Plaintiffs reserve the right to correct, amend, and supplement these answers as additional information and documents become available.

STATE OF ILLINOIS, et al., Plaintiffs
By *William J. Scott*
WILLIAM J. SCOTT
Attorney General
John P. Meyer
JOHN P. MEYER
Lee A. Freeman
LEE A. FREEMAN
Lee A. Freeman, Jr.
LEE A. FREEMAN, JR.
Special Assistant Attorneys General
D. Alan Harris
D. ALAN HARRIS

DATED: January 10, 1975

SCHEDULE I

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COUNTIES				
KANKAKEE				
Storage building, 750 E. East Ave., Kankakee	1974	Homer & Harry Martin		$ 84,900
Detention Center	1972	Consolidated Engineering Div. Assarolli Const. Co. Johnson Doms		2,788,255
Kankakee County Courthouse	1974			37,127
KENDALL				
County Offices Bldg., Fox & Main St., Yorkville	1974	C. Linder Const Co.		695,097

Project Name and Address	Contract Date	General Contractor	Mason Contractor (Cost)	Project Cost
LAKE *				
Additions & Alterations to Lake County Nursing Home Libertyville, Ill.	5/18/70	Jenkins & Boller	Jenkins & Boller ($594,540)	$4,936,450
New Century Town Pumping Facility-Vernon Hills, Ill.	8/14/72	Gernardt F. Meyne Co.	($10,580)	228,343
DesPlaines River Sewage Treatment Plant, Deerfield, Ill.	4/28/72	Hufschmidt Eng. Co.	($58,144)	1,336,584
New Century Town Sewage Treatment plant, Vernon Hills	10/10/72	Kenn & Sons Con. Co.	($75,000)	2,492,000
Diamond Lake Sewage Treatment Plant, Diamond Lake, Ill.	11/6/71	Ziegler & Son Inc.		229,831
Vernon Hills Sewage Treatment Plant, Vernon Hills, Ill.	8/6/71	Ervin Robinson Const. Co.		142,375

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
AURORA				
Fire Station Highland & Indian Trail	1971	Carl Linder		$282,816.00
Fire Station Near Routes #65 & 59	1974	R C Wegman Const. Co.		$305,335.00
Police & Court Bldg. 350 North River Street	1973	Earl Pfeiffer & Co.		$73,505.00
Well House Pioneer Parks S. of Galena Blvd.	1972	R C Wegman Construction Co.		$121,209.00
Well House #23	1973	Earl Pfeiffer & Co.		$53,203.00
Bus Terminal-Whse-Maint & Office Bldg., 649 S. River Street	1973	Chapple Co.		$358,458.00
Booster Pumping Sta.	1974	Carl Linder Co.		$525,785.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BARRINGTON				
Waste Treatment Plant Addns.	1970	Schlese Construction		$1,353,840.00
Waste Treatment Plant	1970			$1,239,100.00
BARRINGTON HILLS				
Barrington Hills Village Hall Inter Hwy 399 - 62 & 68	1974	Pepper Const. Co.		$100,000.00
BARTLETT				
Waste Water Treatment Plant South Side of Village	1974	Gerhardt F. Hoyne Co.		$2,164,134.00
BEDFORD PARK				
Punch Press Mfg. Plt. 6336 West 73rd Street	1973	Clearing Industrial Dist.Inc.		$3,000,000.00
BERKELEY				
Public Library Taft & Maple Streets	1971	Grafic Construction Co.		$103,589.00
BERWYN				
Public Works Garage 6700 West 30th Street	1970			$24,900.00
BLOOMINGDALE				
Pump House	1974	Butterfield Construction		$33,000.00
BATAVIA				
Sewage Treatment Plant	1973	Ruddy Bros. Inc.		$200,000.00
BLUE ISLAND				
Police Station Southeast corner New & Greenwood	1973			$654,100.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BOLLINGBROOK				
Municipal Building Route 53 & Oldfield	1971	Thorsen Construction Co.		$129,694.00
Fire Station 312 Briarcliff	1972	Marcus Const. Co.		$123,970.00
Fire Station #2 107th St. just W. of Rt.53	1973	Marcus Const. Co.		$217,960.00
BOURBONNAIS				
Sewage Treatment Plant	1970	Ray J. Benoit & Sons		$319,000.00
Jail	1974	Johnson-Downs Const. Co.		$33,125.00
Municipal Facils Complex 1/2 Mile N. of City on Hwy.12	1971	Consolidated Engrg-Div.of Azarelli Const.Co.		$218,049.00
BRIDGEVIEW				
Village Hall 7401 West 75th Street	1973	Const. Mgr.-Richard H. Small		$450,000.00
BROADVIEW				
Village Hall 1600 Roosevelt Road	1971	Frank W. Novak		$122,387.00
Public Works Garage & Office 9th Ave. & IC Tracks	1973	A M Sunrise Const. Co.		$230,000.00
BURR RIDGE				
Village Hall 7700 West 79th Street	1974	B S J Const.		$17,250.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost	
CALUMET CITY					
Fire Station Pulaski Road	1972	A E Berg Co. Inc.		$177,235.00	$ 2,922
CALUMET PARK					
Jail 12409 Throop	1973	Matteson Builders	Matteson Builders	$54,830.00	
CARPENTERSVILLE					
Storage Mtc. Bldg. Off of Lake Marion Rd.	1972	Sinnett Bldrs. Inc.		$24,980.00	
CHICAGO HEIGHTS					
Lift Station	1973	Schiese Const. Co., Inc.		$388,163.00	
City Hall 16th & Chicago Road	1974	Klein Construction		$1,687,474.00	
Safety & Justice Bldg. 16th & Halsted	1974	The Lombard Co.		$1,490,089.00	
Fire Station No. 1	1970	Stagg Custom Carpenters		$65,902.00	
CHICAGO RIDGE					
Pre-Engineered Underground Water Pumping Station, 97th and Harlem Avenue	1974	Enco Contrg. Inc.		$141,405.00	
Police Facility 10501 South Oxford	1974	Peterson & Son Const. Co., Inc.		$75,450.00	

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COUNTRY CLUB HILLS				
Municipal Building	1971	Medema Bldrs. Inc.		$84,900.00
Public Works Building(addn) 3700 West 175th Place	1973	Steel Con. Co.		$16,725.00
Municipal & Public Works Bldg.	1969	See Construction Company		$150,000.00
CRESTWOOD				
Municipal Bulding (adn) 13840 South Cicero	1972	Raday Const. Co.		$124,644.00
Fire Station (2d Flr adn)	1974	Raday Const.Co.		$63,833.00
Pre-Engrd. Public Wks Garage 138th & Lamon	1972	Predesigned Bldgs., Inc.		$33,850.00
Public Wks Garage (off addn) 138th & Lamon	1973	Pre-Designed Bldgs., Inc.		$28,450.00
CRYSTAL LAKE				
Sewage Treatment Plant N.Side of Town off Hwy.I76	1974	C. Mayne Co.		$1,463,000.00
Water Treatment Plant Intersection of Virginia Rd.&Platt Road	1974	Enco Construction		$595,494.00
Sewage Treatment Plant #1 Addition and New Sewage Plant	1970	Gerhardt Mayne Co.		$1,656,000.00
Sewage Treatment Plant - Effluent Sewage Polishing Pond	1969	Dunteman		$145,011.00
Waste Treatment Plant & Addition Remodeling	1969	William Diegle & Son, Inc.		$148,594.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
DEERFIELD				
Sewage Treatme Plant Alterations	1969	Keyno & Sons		$110,000.00
Library	1970	Floodstrom Construction Co.		$708,908.00
DIXMOOR				
Recreation Building 143rd & Hobey Street	1974	Morton Building Co.		
DOLTON				
Fire Station #1	1970	Delisi Construction Co.		$173,297.00
Public Works Bldg.Addition	1970	Delisi Construction Co.		$32,151.00
DOWNERS GROVE				
Sewage Pumping Station	1969	Wigert Company		
Fire Station 39th and Highland Avenues	1970	Garner Construction Company		$328,909.00
Well House #12	1970	Eichman Builders		$13,000.00
Well #12 Finley Rod 1/2 Mi. S. of Butterfield	1972	A Kopechy & Sons		$26,900.00
Police Station 945 Burlington	1972	Fonstein Builders Inc.		$10,275.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
EAST CHICAGO HEIGHTS				
Community Service Center Bldg. Cottage Grove & Lincoln Hwy.	1971	R H Roberts Const. Co.		$470,854.00
ELGIN *				
Lords Park Pavilion(alts)	1974	Ron Albert		$29,459.00
Riverside Drive Impr & Joseph C Spiess Parking Decks, Riverside Dr. bet Chicago and Prairie	1974	Tonyan Const. Co., Inc.		$1,086,681.00
City Hall 150 Dexter Court	1972	Sinnott Bldrs., Inc.		$22,389.00
Spartan Meadows Golf Club House	1970	Lamp Construction Co.		$92,993.00
Police Storage & Motor Shop	1970	Sinnott Builders, Inc.		$125,213.00
West Side Water Plant Addition	1970	Gerhardt F. Mayne Co.,		$529,400.00
Public Works Storage Garage	1972	Sinnott Builders, Inc.		$203,329.00
ELMWOOD PARK				
Library	1974	A Fieri & Associates		$360,000.00
Recreation Building Village Circle	1973	Hank Fieri & Associates		$565,497.00
EVANSTON				
Fieldhouse & Indoor Ice Rink	1974	Arthur M. Goebelt		$1,800,000.00
Ladd Arboretum Bridge St. & at McCormick Blvd.	1973	Arthur M. Goebelt Bldrs.,Inc.		$111,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
EVANSTON(continued)				
Pre-Engineered Shelter Bldg. Central Ave. & Lake Front	1973	Wm. Spikowski		$20,000.00
Levy Center For the Elderly	1973	Frank H. Stowell & Son		$26,375.00
EVERGREEN PARK				
Recreation Department Bldg. 93rd & Sawyer	1971	Cliff Lindholm Const.Co.		$26,987.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
FOREST PARK				
Public Works Building 15th & Hannah	1972		Hanke-Cimo Co.	$155,000.00
Village Hall & Fire Station 517 Des Plaines	1974	Carl Reiche		$607,543.00
Spring Brook Sewage Treatment Control Building Blower Building Plainfield & Naperville Rds. 1-1/2 Miles South of DuPage Will Co. Line	1974	Geo Sollitt Const. Co.		$5,836,888.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
FOX LAKE				
Village Hall	1972	Wm. Tonvan & Sons, Inc.		$359,200.00
Pre-Engineered Municipal Bldg.	1970	Imperial Equipment Corporation		$150,000.00
FRANKLIN PARK				
Fire Station 3113 Atlantic Street	1970	Hess & Sons		$101,427.00
Indoor Ice Skating & Hockey Rink Waveland Between Rose & Ruby Sts.	1973	Solberg & Sullivan Co.		$962,855.00
Lift Station Scott Street	1973	SPD Service		$14,000.00
FRANKFORT VILLAGE				
Sewage Treatment Plant(addn)	1971			$424,830.00
Well House	1974	John Burns Const. Co.		$66,221.00
Village Hall	1974	Wayne Johnson Construction		$18,000.00
GLENDALE HEIGHTS				
Municipal Civic Ctr. & Police Fac. Bloomingdale Road near Fullerton Ave.	1974	Peter G. Kaneloe Inc.		$1,300,000.00
Well House #5, Roskin Park (S. of Fullerton Ave. bet Ardmore & Chase Drive)	1972	Enco Contr. Co.		$45,187.00
Sewage Treatment Plant	1970	E. F. Muller Construction Co.		$295,872.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
GLEN ELLYN VILLAGE				
Recreation Bldg. Pennsylvania & Kenilworth Aves.	1974	E. P. Doyle & Son, Inc.		$32,000.00
Village Hall Duane St. & School cor of Main St.	1971	Sundene Const. Co.		$330,000.00
Sewage Treatment Facility	1970	Atton Construction Co.		$2,495,865.00
GLENWOOD				
Garage Bldg.	1969	Burnside Construction Co.		$11,300.00
Fire House and Station	1971	Fryklund Construction Company		$63,500.00
GURNEE				
Village Hall	1972	D & D Construction		$40,000.00
HICKORY HILLS				
Maint. Bldg., Casey Meadow Pk.	1974	Michael Whit		$20,835.00
VILLAGE OF HODGKINS				
Reservoir & Pumping Station	1971	Ceraiglia & Co.		$807,526.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
HIGHLAND PARK				
Public Works Building Half Day Dr.-E. of U.S.Hwy.41	1972	M B Christensen Const. Co.		$970,935.00
Fire Station Laurel Ave. & Green Bay Rd.	1974	Hansen & Warhane		$245,191.00
Municipal Garage, Old Skokie Road	1970	Joseph Schiller		$252,519.00
HOMEWOOD				
Maintenance Service Center 17755 S. Ashland	1974	Burnside Const. Co.		$476,977.00
Sewage Treatment Plant	1969	Zigler		$1,475,287.00
ITASCA				
Village Hall	1974	D R W Inc.		$114,331.00
Police Station (alts from fire station)	1973	D R W Inc.		$129,940.00
Library	1972	Hess & Son Inc.		$238,437.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LOMBARD				
Fire Station 20th and Highland St.	1970	Midway Construction & Engineering Co.		$165,000.00
)Public Wks Off & Maint Bldg)Pub Wks Vehicle Bldg)Dry Storage Bldg Wilson-Ammerschmidt Contrai- Stewart Streets	1972	Rauhe-Cimo Co.		$670,000.00
Pumphouse For Well #9	1972	Butterfield Const. Co.		$39,823.00
LINDENHURST				
Village Hall-Police Station & Vehicle Bldg. 2301 Sand Lake Road	1974	Joseph J. Henderson		$195,740.00
LYONS				
Police Department & Admin Bldg 7801 Ogden Ave.	1972	Midway Const. & Engrg		$358,165.00
Fire Station, 7801 Ogden	1972	Midway Construction & Engrg		$287,764.00
Branch Library & Fire Station	1972	Martin Yelnick Construction		$334,781.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
McHENRY				
Sewage Treatment Plant Lakeland Park	1971	William Zeigler & Sons, Inc.		$973,000.00
MARKHAM				
Water Pump Station 156st St. & Crawford Aves.	1970	Hulett Corporation		$200,000.00
MAPLE PARK				
Well House #3 Charles & Pearl St.	1971	Manese Bros. General Contrs.		$28,900.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MC HENRY				
City Hall 1111 North Green Street	1974	Joseph Pratt & Son		$90,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MC HENRY (continued)				
Sewage Treatment Plant Lakeland Park	1971	William Zeigler & Son,Inc.		$973,000.00
MATTESON				
Fire Station Nr. Lincoln Hwy. & Central Ave.	1973	Fryklund Const. Co.		$185,975.00
Village Hall 3625 W. 215th Street	1974	Peter Hanson & Sons, Inc.		$267,537.00
Pre-Engineered Stell Public Work Building , Tower Avenue	1973	Alpha Const. Co. Pre Designed Bldgs.Inc. Intergrated Bldg. Systems		$105,231.00
MIDLOTHIAN				
Public Library	1970	Medema Builders		$58,600.00
MONTGOMERY				
Storage Building Off Rte 31 on Kanell Rd.	1974	LaVerne Weber		$89,497.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MORRIS				
Pre-Engineered Storage Bldg.	1972	Professional Const. Co.		$22,560.00
Rest Room Facility	1973	Morris Construction Co.		$18,210.00
Sewage Treatment Plant	1970	Kohler Construction		$822,196.00
MT. PROSPECT				
Water Well House #16 Algonquin & Busse Roads	1973	R T Meyer		$107,490.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
NAPERVILLE				
Municipal Center	1971	Eldridge Construction Company		$70,774.00
Electric Substation	1971	Bock & Carney		$1,313,501.00
North Wastewater Treatment Plant	1971	Oak Lawn Construction Co.		$152,147.00
Police Station	1972	Unger Const. Co.		$107,792.00
North Sewage Treatment Plant Nr. U.S. Rte 34	1972	Smith & Loveless-Lennox Kennan-Div.of Stannard Power Equip. Company		$85,000.00
Sewage Treatment Plant	1969	Angeleen Company		$536,860.00
NEW LENOX				
Village Hall	1970	Stage Custom Construction Company		$30,636.00
Sewage Disposal Plant Laraway Road	1973	Gaskill & Walton Construction Co.		$275,420.00
NILES				
Village Administration Building	1969	Pritscher & Urbah		$162,000.00 ($252,727.00)total
NORTH AURORA				
Municipal Building	1971	Ruddy Bros.		$311,513.00
Village Hall, 25 E.State	1974	R C Wagman Construction Co.		$41,985.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
NORTH CHICAGO				
Water Treatment Plant	1971	Keno & Sons Construction		$2,088,000.00
OAK BROOK **				
Public Works Bldg., Jorie Blvd. & 31st St., Oak Brook, Ill.	8/8/73	Klein Construction Co.	Ready Masonry	649,934
Oak Brook Village Hall, Spring Rd. & Oak Brook Rd., Oak Brook, Ill.	2/13/74	Fora Construction Co.	Roche & Lee	2,485,793
Firehouse 2, Enterprise & 22nd St.	9/3/71	G.A. Johnson & Son.	J & E Duff	425,132
OAK LAWN **				
Public Works Garage, 5532 W. 98th Street	11/30/66	E.G. Anderson	Ken Madsen	85,800
Fire Station, 10300 So. Kostner	9/26/73	A.H. Sunrise	Mar-Lo	490,284

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
OAKBROOK TERRACE**				
Municipal Building Butterfield Road	1970	Steben Builders, Inc.		$72,989.00
OAK PARK				
Municipal Building Euclid and Lake Streets	1970	Olson Bros. Constr. Co.		$14,000.00
Office Building 105 S. Oak Park	1974	Swanson Const. Co.		$25,000.00
(A) Civic Center (B) Public Safety Bldg (C) Maint Garage Bounded by Madison-Lombard-Taylor & Adams	1973	Turner Const. Co.		$2,000,000.00
ORLAND PARK				
Community Building	1970	Bee Dee Builders		$80,000.00
Well Pumphouse #4	1973	Karl Pfeiffer & Company		$33,518.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PALATINE				
Colfax Fire Station	1974	Oscar Berge Bldrs.		$243,490.00
PALOS HEIGHTS				
(a) Swimming Pool (b) Bathhouse	1972	E. G. Anderson		$409,540.00
PARK FOREST				
Community Center Lakewood Blvd. W Of Orchard Dr.	1974	Silco Construction		$511,482.00
(a) Public Safety Bldg. (b) Village Hall 200 Lakewood Avenue	1972	Stagg's Custom Constrs. Inc.		$57,229.00
PARK RIDGE				
City Hall 505 Park Place Park Ridge, Illinois	1972	C. W. Gaserud General Contrs. Inc.		$285,057.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
POSEN				
Municipal Bldg. 147th St. From Sherman to Campbell	1972	Carroll Const. Co.		$404,191.00
Community Center 14401 Campbell	1972	Ranke-Cimo Co.		$273,000.00
PROSPECT HEIGHTS				
(a) Community Center Bldg (b) Outdoor Swimming Pool	1974	R W Construction Co.		$1,073,309.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
RICHMOND				
Sewerage Treatment Plant	1974	R L O'Neil Bldrs, Inc.		$508,502.00
ROBBINS				
Community Center (PhaseII) 138th & Trumbull	1972	Moore Construction Co.		$202,293.00
ROLLING MEADOWS				
Public Works Garage and Office 3200 Central Road	1970	Aspen Enterprises		$194,582.00
Pre-Engineer Garbage Transfer Station nr.Gold Rd.&NW Tollway	1970	Budd Bailey Construction Co.		$57,709.00
Pumping Station Industrial Ave.&Hicks Rd.	1971	Aspen Enterprises		$89,974.00
Well Pump House #6	1973	J S Drew Const. Co.		$32,688.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ROSELLE				
Sewage Treatment Plant 720 S. Rush	1972	George Hardin Inc.		$288,888.00
Fire Station Walnut and Rush	1974	Mikes Bros.		$322,986.00
ROUND LAKE BEACH				
Municipal Garage& Meeting Hall	1971	The Chapel Co.		$79,727.00
Pre-Fabricated Sewer & Water Admin Bldg.	1974	B & L Construction		$26,395.00
Village Hall	1971	Edwin Pederson		$6,385.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
SAUK VILLAGE				
Police Station	1973	Talandis Const. Corp(negotiated)		$25,785.00
Public Works Garage 223 and Cornell Ave.	1973	Bryant Bldgs, Inc.		
SCHILLER PARK				
Fire House	1969	O'Hare Carpentry Service		$23,506.00
SKOKIE				
Public Works Garage 5015 David St.	1971	Thorenstron Co.		$639,484.00
SOUTH ELGIN				
Water Treatment Plant #3	1971	Illinois Hydraulics Const.		$93,900.00
Well House #4	1974	Rosalaine Const. Co.		$97,847.00
SHOREWOOD				
Village Hall 1/2 Mile W. of Rt.#59 On Rt.#52	1973	Professional Const.Co.		$38,980.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
SOUTH HOLLAND				
Municipal Maintenance Bldg.	1969	Peter Hansen & Sons		$70,520.00
Police Station	1974	Klein Const. Co.		$499,925.00
Library (Int Compl)	1973	Chicago Heights Const. Co.		$21,782.00
Fire Station	1973			$158,596.00
STREAMWOOD				
Wellhouse #7	1972	Ill. Hydraulic Const. Co.		$16,800.00
Fire Station #1	1971	J A Brontsnyder		$212,688.00
Water Treatment Plant #2	1970	Ray T. Mayer Company		$257,361.00
SUGAR GROVE				
Pole-Frame Storage Building	1974	Tazewell Builders Supply Inc.		$20,500.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
TINLEY PARK				
Fire Station & Village Hall 6825 173rd Street	1971	William C. Kuhlman Const.		$561,000.00
Fire Station 167th Street & Parliament Ave.	1974	Florsno Const.		$162,719.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
VALLEY VIEW				
Sewage Treatment Plant Off Rte. #25	1974	American Contrs.		$744,700.00
VERNON HILLS				
Public Works Garage 291 Oakwood Road	1973	J. Simic Inc.		$17,840.00
VILLA PARK				
Fire Station	1974	Kerr Const. Co. Inc.		$313,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WAUKEGAN				
Bathhouse 2000 Belvidere Road	1974	E. C. Dever Co.		$62,675.00
Pumping Station	1973	R. L. O'Neil Bldg. Inc.		$355,543.00
Reservoir	1973	Pitts-Desmoine Stl. Co.		$186,000.00
Police Department(Int. Remod) 410 Madison	1973	Jenkins & Boller Inc.		$30,000.00
Animal Shelter 106 North Utica Street	1974	W. H. Const. Co.		$30,057.00
Waukegan Office Building	1970	Willard R. Shields, Inc.		$352,420.00
WAUCONDA				
Public Works Garage	1971	Bohlin Building Corp.		$64,766.00
Pumping Station & Sanitation Sewer	1971	Gluth Brothers		$32,802.00
Water System Impro & Pump Control Building	1974	Potter Const. Co.		$140,770.00
WEST CHICAGO				
City Hall Bldg. 475 Main Street	1974	Edward H. Murphy		$149,515.00
Fire Station	1969	Sundene Construction Co.		$121,300.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WESTMONT				
Public Works Garage 55th & Wilmette	1972	D. E. Unger Const. Co.,Inc.		$89,232.00
North Side Fire Station Traub & Cass Avenue	1970	Chec and Flavell		$69,220.00
Pump Station Addition Well #5	1970	Oak Lawn Construction Company		$48,520.00
Police Station	1971	H. Clark & Sons		$62,650.00
WILLOW SPRINGS				
Fire Station #2	1970	Belisi Construction Company		$91,317.60
WINFIELD				
Garage & Storage Bldg.	1974	Steel Sys.		$20,750.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WINNETKA				
Fire Training Tower 1390 Willow Rd.	1974	Aspen Enterprises		$83,474.00
Garage & Service Bldg.	1970	Kaiser Bucket Corp.		$600,000.00
WOOD DALE				
Village Hall	1969	Watson Construction Co.		$101,890.00
WOODRIDGE				
Club House 75th Street	1973	Butterfield Const. Co.		$49,995.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
NORTH				
Public Works Bldg. 110th & Hoonaha	1974	Silco Const. Co.		$288,961.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ZION				
Police Station Salem & Gideon	1974	Amos Bros. Const. Co.		$998,171.00
Public Works Bldg.	1972	Watering Bros.		$64,990.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
HOUSING AUTHORITIES				
DE KALB COUNTY HOUSING AUTHORITY**				
Project Ill 89-1, 16-story Elderly, DeKalb, Ill.	8/5/69	Bor-Son Bldg. Corp.		$2,097,694
Project Ill 89-3, 5-story Elderly, Sycamore, Ill.	8/5/69			1,039,825
Project Ill 89-4, 13 Family Duplexes & Manage-ment & Maintenance Bldg.	12/31/70	Paul Pieper Const. Co.		447,720

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LAKE COUNTY HOUSING AUTHORITY				
Housing for the Elderly Lotus Dr. & Sunset Pk.	1973	W. H. Shields Inc.		$1,388,672.00
Housing For The Elderly 730 W. Glenview Dr.	1974	Dall Corp.-E. Kubicek		$1,000,000.00
WAUKEGAN HOUSING AUTHORITY				
111 26-3 Housing for Elderly, Waukegan, Hi-Rise 10-story, 155 units	5/6/69	Corbetta Constr.	Ceisel & McGuire ($197,827)	1,786,405

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
S C H O O L S				
ADDISON COMMUNITY SCHOOL * **DISTRICT #4, Addison, Illinois**				
(A) Indian Trail Jr. High School	1973	The Kinnare Corp.		$216,242.00
(B) Oak Elementary School(alts)	1973	The Kinnare Corp.		
Addison Primary School	1971	Solberg & Sullivan Co.		$1,028,441.00
Indian Trail Junior High School Army Trail Road	1971	Henry Bros. Co.		$2,147,427.00
ALSIP,HAZELGREEN & OAK LAWN ** **COMMUNITY SCHOOL DISTRICT 126** **Alsip, Illinois**				
Lane School Addition Alsip, Illinois	1968	C. O. Nelson & Sons		$144,548.17
Oak View School 110th & Knox, Oak Lawn,Ill.	1967	Delise Const. Co.		$304,768.33
Oak View School Addition 110th & Knox, Oak Lawn,Ill.	1969	Delise Const. Co.		$317,025.00
Stony Creek School Addition Phase I, 117th & Kolin, Alsip,Ill.	1969	A. H. Viren & Sons Inc.		$464,824.07

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ARBOR PARK COMMUNITY SCHOOL* DISTRICT 145, Tinley Pk.,Ill.				
Arbor Park Middle School (adds) Forest Ave. & 159th St., Oak Forest	1973	Chicago Heights Const. Co.		$601,014.00
Forest Avenue Elementary School and Kimberly Heights Elementary School., Tinley Park, Illinois	1970	C. O. Nelson & Sons		$386,142.00
ARGO-SUMMIT HIGH SCHOOL DISTRICT 217, Argo, Illinois				
Argo High School (life safety code alts)7301 W.63rd Street	1974	Industrial Structures		$464,920.00
Argo High School(life safety code) 7301 West 63rd Street	1973	Industrial Structures		$328,780.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ATWOOD HEIGHTS COMMUNITY SCHOOL DIST.125, Merrionette Park,Ill.				
(A)Lawn Manor Elementary School 4300 W. 108th Place Alsip, Illinois (B)Meadow Lane Elementary School 118th & Meadow Lane Merrionette Park, Illinois (A & B life safety code alts)	1974	Johnson-Thyberg Const. Co.		$35,000.00
AURORA (WEST) COMMUNITY UNIT 129, Aurora, Illinois				
School For The Mentally Handicapped, Aurora, Ill.	1969	Francsail Bros.		240,370.00
2 Primary Schools 304 Banbury,North Aurora & 1332 Robinwood, Aurora (life safety code)	1973	[illegible] Olson Const.		$20,000.00
School-Pre-School Children West Park & Oak nr. Rte.31	1972	Warren Bros.		$27,268.00
(A)Washington Jr.High School Alschuler & Winifred Dr. (B)West Sr.High School Stadium 1201 W. New York (C)Franklin Jr.High School 14 Blackhawk	1973	Warren Bros. Const. Co.		$53,788.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
AVOCA COMMUNITY SCHOOL DISTRICT 37, Wilmette, Ill.				
Avoca East High School	1970	Norman Bullerman		$18,300.00
Avoca East Grade School	1970	Norman Bullerman		$18,000.00
AVON CENTER COMMUNITY SCHOOL DIST.47, Lake Villa, Ill.				
Primary Grade School (new)	1972	E. C. Bauer Const. Co.		$315,087.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BARRINGTON COMMUNITY CONSOLIDATED SCHOOL DIST.#4 Barrington, Illinois				
Roselyn Road Elementary School Barrington, Illinois	1969	Zenk Construction Co.		$25,857.00
Barrington Middle School 215 Eastern	1973	Gebhardt Const. Co.		$313,670.00
BATAVIA UNITED SCHOOL DIST. 101, Batavia, Illinois				
Batavia High School (addn)	1970	Fitzsimmons		$982,910.00
McWayne Elementary School Nelson Elementary School	1971	Driessen Construction Co.		$22,435.00
Batavia Sr. High School	1970	George Kohler & Sons, Inc.		$952,017.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BENJAMIN COMMUNITY SCHOOL DIST. 25, West Chicago, Illinois				
Elementary School Morton Rd. nr. Rt.64 Carol Stream, Illinois	1974	Sundene Const. Co.		$431,214.00
BENSENVILLE COMMUNITY SCHOOL #2, Bensenville, Illinois				
Blackhawk Jr. High School 250 South Church	1973	The Kinnare Corp.		$56,166.00
W. A. Johnson Elementary School Second & Briar Lane, Bensenville				
Lincoln Elementary School West Thorndale Avenue Bensenville, Illinois				
Mohawk Elementary School West Hillside & Franzen Streets Bensenville, Illinois	1971	Stade Construction Co.		$37,644.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BERKELEY COMMUNITY SCHOOL DIST.87, Berkeley, Illinois				
7 Elementary Schools Sunnyside Field Twain Franklin Jefferson Whittier Longfellow	1974	The Kinnare Corp.		$244,217.00
Administrative Offices Sunnyside Elementary School Sunnyside Jr.High School	1970	Mayer-Boss Inc.		$1,300,000.00
Jr. High School Northlake, Illinois	1969	Solberg and Sullivan		$1,480,179.00
BERWYN(NORTH) COMMUNITY SCHOOL DIST.98, Berwyn, Illinois				
Havlicek Elementary School	1969	Mutual Contracting Co.		$547,619.00
Jefferson School & Lincoln Jr. High School 16th & Wisconsin 16th & Gunderson	1973	John Haugan Jr. Inc.		$11,400.00
Custer Jefferson Lincoln & Havlicek Schools	1974	John Haugan Jr. Inc.		$14,300.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BLOOM TOWNSHIP HIGH SCHOOL TOWNSHIP 206, Chicago Heights,Ill.				
High School,Jr.-Sr. Division	1969	Lustig & Son		$229,000.00
Bloom Township High School Sauk Tr. & Cottage Grove	1973	Cuda Construction Co.		$18,892.00
Bloom Township High School Sauk Tr. & Cottage Grove (Freshman & Sophomore Div.)	1973	H. Lustig & Sons		$135,000.00
Bloom Township High School	1973	Chandler Const. Co.		$35,377.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BLUE ISLAND COMMUNITY SCHOOL DIST.130, Blue Island, Ill.				
Blue Island Jr. High School 2509 West 103rd Street	1973	Trim Constr. Co.		$6,342.00
(A)Everett F.Kerr Jr. High School 12300 Greenwood (B)Greenwood Elem.School 12418 Highland Ave. (C)Nathan Hale Elem.School 135th & Long (D)Lincoln Elem.School 2140 W. Broadway (E)Horace Mann ElemSchool 2910 Broadway (F)Paul Revere Elem.School 12331 S. Gregory (G)Sanders Elem.School 13010 S. Division (H)Whittier Elem School 13043 S. Maple	1973	Trim Construction Co.		$293,704.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
BROOKFIELD COMMUNITY SCHOOL DIST.95, Brookfield, Illinois				
Cross Elementary School	1969	C. W. Gasarud		$40,600.00
BROOKWOOD COMMUNITY SCHOOL DIST.167, Glenwood, Illinois				
Longwood School	1969	Fryklund Construction Co.		$200,000.00
Brookwood Jr. High School	1970	Stephens Construction		$505,835.00
Longwood Elem.School Longwood Drive	1973	H. Lustig & Son		$13,700.00
(A)Brookwood Jr.High School Glenwood-Lansing Rd. (B)Brookwood Elem.School Glenwood-Dyer Rd.	1973	A & J Const. Co.		$9,947.00
(A)BrookwoodElem School Glenwood-Dyer Rd. (B)Brookwood Jr. High School Glenwood-Lansing Rds.	1972	Hines Masonry Contrs.		$9,590.00
BURLINGTON COMMUNITY UNIT 301 Burlington, Illinois				
Central High School	1969	Joseph Pratt & Sons		$130,999.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
CALUMET CITY COMMUNITY SCHOOL DIST.155, Calumet City, Ill.				
Woodrow Wilson Elem. School 560 Wentworth Ave.	1972	H. Lustig & Son		$13,160.00
CALUMET CITY COMMUNITY SCHOOL DIST. 156, Calumet City, Ill.				
Lincoln Elem. School Freeland Avenue	1972	H. Lustig & Son Constr.		$67,975.00
CALUMET PARK COMMUNITY SCHOOL DIST.132, Calumet Park, Ill. *				
Burr Oak School (addition)	4/13/68	Dalton Const. Co.		$305,602.73
Calumet School (addition)	4/13/68	Talsma Builders		$499,488.10

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
CASS COMMUNITY SCHOOL DIST.63* Downers Grove, Illinois				
Cass School Addn.	10/15/69	Tatoole & Schroll	Pagnato Masonry	$283,595.00
Concord School	4/26/73	Walson Constr.	Voroluk Const.	$613,306.00
CENTER CASS COMMUNITY SCHOOL * DIST.66, Downers Grove, Ill.				
Elizabeth Ide Elem. School	1969	Walson Construction		$496,551.00
CHANNAHON COMMUNITY SCHOOL DIST.17, Channahon, Ill.				
Channahon Grade School	1970	R. C. Lif Construction Co.		$51,909.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COMMON SCHOOL 104 * Justice, Illinois				
(A)Geo. Wilkins Jr. High School 80th & 82nd Ave. Justice, Illinois				
(B)Robert Park School 8540 S. Roberts Rd. Justice, Illinois				
(C)Frank A. Brodnfki School 8641 W. 75th St. Justice, Illinois				
(D)Bridgeview Elem. School 79th & Thomas Rd. Bridgeview, Illinois				
(E)Justice School 8000 South Cork Justice, Illinois	1974	James W. Hardy		$331,700.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COMMUNITY CONSOLIDATED SCHOOL* DISTRICT 59, Arlington Heights, Illinois				
Brentwood Addition #2	12/67	Egyptian Constr.		$93,047.57
Byrd Original Bldg.	3/67	Frederick Quinn Constr.		$388,420.16
Byrd Addition #1	3/68	Egyptian Constr.		$359,706.54
Dan Cook Original Bldg.	12/68	Paton Construction		$431,592.69
Dempster Addition #3	5/69	Stamak Corp.		$147,136.44
Devonshire Addition #2	2/67	Egyptian Constr. Co.		$101,080.90
Devonshire Addition #3-other costs	5/70	W. F. Fitzsimmons		$41,635.36
Einstein Addition #1	2/67	Egyptian Constr.		$149,791.65
Einstein Addition #2-other costs	5/70	W. F. Fitzsimmons		$74,091.80
Forest View Addition #2-other costs	5/70	W. F. Fitzsimmons		$172,129.69
Friendship Jr. High Org.Bldg.	7/71	A. E. Burg		$2,114,213.37
Robert Frost Addition #1	3/66	A. H. Sollinger Constr.		$204,837.97
Grove Jr. High Addition #4	2/66	Wil-Fred's Inc.		$177,172.00
High Ridge Knolls Addition #2	5/69	Stamak Corp.		$102,289.00
High Ridge Knolls Addition #3-other costs	5/70	W. F. Fitzsimmons		$51,333.28
Holmes Jr. High Org.Bldg.	3/66	Ockerlund Constr. Co.		$847,380.50
Holmes Jr. High Gym Floor	7/67	W. A. Knettcher Co.		$11,586.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COMMUNITY CONSOLIDATED SCHOOL DISTRICT 59, Arlington Heights, Illinois (continued)				
Holmes Jr. High Addition #1	11/68	Stamak Corp.		$313,152.10
Mark Hopkins Addition #1-other costs	5/70	W. F. Fitzsimmons		$307,146.32
John Jay Org. Bldg.	3/67	Frederick Quinn Constr.		$383,729.94
John Jay Addition #1	3/68	Egyptian Constr.Co.		$359,325.99
Lively Jr. High Org. Bldg.	5/67	Ragnar & Olson		$908,643.43
Lively Jr. High Addition #1	3/70	Egyptian Constr. Co.		$390,124.00
Juliette Low Addition #1	3/70	Egyptian Constr. Co.		$221,269.44
Ridge Addition #1	2/66	Wil-Fred's Inc.		$116,426.56
Salt Creek Addition #2	3/68	Ragnar & Olson Co.		$131,829.30
Grant Wood Addition #1	3/66	A. H. Sollinger Constr.		$216,119.47
Service Center Org.Bldg.	4/71	Chapple Co.		$81,744.00
Grove And Dempster Remodeling	4/29/74 4/5/74	Meyer-Ross, Inc. American Air Filter		$1,109,160.00 $112,958.00
Devonshire Elementary School Albert Einstein Elem. High Ridge Holes Elem. Forest View Elem. Mark Hopkins Elem.	1970	W. F. Fitzsimmons & Co.		$625,686.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COMMUNITY CONSOLIDATED 168 Sauk Village, Illinois				
Jr. High School	1970	Newgren Construction Company		$638,837.00
Wagoner School	1974	Fryland Const. Co.		$159,986.00
(A)Richover Jr. High School 222 Torrence Ave. Sauk Village, Ill. (B)Katz Corner Elem. School 22240 Burnham Ave. Chicago Heights, Ill. (C)Strassburg School 2002 223rd Street Sauk Village, Illinois	1971	Fryklund Constr. Co.		$185,503.00
COMMUNITY HIGH SCHOOLS DIST.218 Worth, Illinois				
Harold L. Richard High School Oak Lawn, Illinois	1971	Dinaso & Sons ConstructionCo.		$49,202.00
Ivanhoe High School Old Maine Elementary School Southeast Elem.School Stadium , Blue Island	1969	Chicago Heights Construction Co.		$193,750.00
Vocational Technical Center 139th & Crawford	1972	D. C. Dinaso Const.		$124,012.00
H. L. Richards High School 106th & Central	1974	Geraghty Const. Co.		$2,225,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COMMUNITY HIGH SCHOOLS DIST. 218, Worth, Illinois (continued)				
Northwest Campus High School 115th & Ridgeland	1973	R. T. Milord		$1,124,974.00
Dwight D. Eisenhower High School 12700 & Sacramento	1974	Talsma Builders Inc.		$2,917,008.00
Gymnasium 138th & Crawford	1973	J. A. Boulton Co.		$34,821.00
Northeast Campus High School 107th & Kenton	1973	R. T. Milord		$869,633.00
Alan Shepard High School	1974	Marchol Const. Co.		$6,259,795.00
Greenhouse 137th & Crawford	1972	National Greenhouse Co.		$8,907.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
COUNTRY CLUB HILLS COMMUNITY SCHOOL DISTRICT 160, Country Club Hills, Illinois				
Southwood Elem.&Jr. High School 187th & Lee	1972	Stephan Const. Co.		$529,699.00
CRETE-MONEE COMMUNITY UNIT 201-U Crete, Illinois				
Hickory Elementary School Blackhawk Ave.	1973	Haugren Construction Co.		$303,295.00
Jr. High School Western & Monee Rd. Crete-Monee High School West Exchange	1973	Fred Quinn Const.		$2,955,882.00
Hubbard Trail Jr. High School West Exchange St.	1974	Fryklund Const. Co.		$16,939.00
CUSTER PARK COMMUNITY CONSOLIDATED SCHOOL DIST.44C, Custer Park, Illinois				
Library & Kindergarten Addn.	1970	O. L. Martin		$46,566.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
DEERFIELD COMMUNITY SCHOOL DISTRICT 109, Deerfield,Ill.				
Alan B. Shepard Jr. High School Grove & Franklin Streets	1972	Gerhardt Const. Co.		$30,906.00
Walden School	1969	Polonia Construction		$109,350.00
Administration Building	1970	Arthur H. Goebelt Builders		$104,361.00
Walden Elem. School	1971	Gebhardt Construction Co.		$6,899.00
DE KALB NORTHERN ILL. UNIVERSITY				
University Center Expansion	1966	J. L. Simmons Co.	J. L. Simmons	$4,285,770.52
Group 4 - Phase I	1966	Miller-Davis Co.	Thor. Larson	$6,594,411.88
Reavis-Watson Complex	1966	Miller-Davis Co.	Thor. Larson	$5,628,148.56
Health Service Bldg. Add'n.	1966	Telander Bros.	Hansen & Koupel,Inc.	$1,782,148.96

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
DeKALB NORTHERN UNIVERSITY (CONTINUED)				
Stadium Ticket Vault	1966	Skogland Const.Co.	Bob Skogland	$4,410.40
Group 4-Phase II	1967	Miller-Davis Co.		$5,516,421.70
Rehabilitation of University Center	1967	J. L. Simmons Co.	J. L. Simmons	$453,045.72
IBA #74-29 Biological Science Bldg.	1967	Tonyan Const. Co.	Crouch Walker	$3,568,027.58
Davis Hall Basement Remodlg.	1968	Paul Jacobson Co.	Hansen & Hempel,Inc.	$117,274.62
Remodlg. of Speech Bldg.	1968	Paul Jacobson Co.		$23,263.00
Addn to East Heating Plant	1968	Kennedy Const. Co.	Swen Olin	$602,594.00
IBA #74-28 Art Bldg.	1968	Tonyan Const. Co.	Hansen Hempel,Inc.	$2,903,901.75
Altns. to Neptune Cen.Phase I	1968	T & H Const. Co.	Hansen & Hempel,Inc.	$298,706.14
Altgeld Hall Remodlg.Phase I	1968	T & H Const. Co.		$413,297.33
Misc.Remodlg.&Rehab.-Phase I	1968	T & H Const. Co.		$84,783.00
NIU Pump Station & 20" Dia. Force Main	1969	Freeport Blacktop		$152,920.00
Grant Towers North Living Learning Center	1969	Swedberg Assoc.		$23,815.00
Addn. to Central Receiving Bldg.	1969	Linden & Sons Co.	Linden & Sons	$1,275,470.00
Lorado Taft 80 Bed Dormitory	1970	Chesseman Const. Co.	Chesseman Const.Co.	$223,690.50
Alterations to Neptune Central - Phase II	1970	Paul Jacobson Co.	Paul Jacobson	$98,420.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
DeKALB NORTHERN UNIVERSITY (CONTINUED)				
Remodeling U.School, T & T Davis Hall & Williston Hall	1970	R. C. Wagman Const.	D. Hausler	$19,095.00
IBA #74-30,75-53,76-118 Psychology-Math. Bldg.	1970	Paul Jacobson Co.	Hansen & Hempel,Inc.	$3,000,000.90
Addn to Security-Communications Bldg.	1971	Paul Jacobson Co.	Swen Olin	$100,178.24
IBA #76-119 Music Bldg.	1971	Lindquist Const. Co.	Lindquist	$6,431,612.77
Utility Tunnel from Lincoln Hall to W.Heating Plant	1971	Paul Jacobson Co.		$102,232.48
Computer Services Bldg. Interior Phase	1971	Bldg. Systems, Inc.	Fridley & Kruger	$42,658.00
Davis Hall Remodeling	1971	Paul Jacobson Co.	Hansen & Hempel	$354,308.39
Library - Phase I	1973	A. J. Maggio Co.	Thorlief Larsen & Son	$9,739,283.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
DES PLAINES COMMUNITY CONSOLIDATED SCHOOL DIST.62, DesPlaines, Ill.				
Algonquin Jr. High School 767 Algonquin Road	1972	George Knight Const. Co.		$232,434.00
Algonquin Jr. High School 767 Algonquin Rd.	1973	George Knight const. Co.		$33,850.00
South Grade School 1535 Everett St.	1973	Norman Ballerman		$14,574.00
Chippewa Jr. High School 123 8th Ave.	1974	Cornell & Parnell Inc.		$46,712.00
Orchard Place Grade School	1969	William C. Kuhlmann		$212,838.00
West Grade School	1969	Cornell and Parnell, Inc.		$62,332.00
Maple Grade School	1969	Stade Construction Co.		$84,148.00
Terrace Grade School 735 Westgate	1971	Midway Construction & Engineers Co.		$78,798.00
DOLTON COMMUNITY SCHOOL DIST. 148, Dolton, Illinois				
Garage	1974	John Klouse		$21,000.00
Roosevelt Elem. School 144th & LaSalle	1973	C. O. Nelson		$110,491.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
EAST MAINE COMMUNITY SCHOOL DIST. 63, Niles, Illinois				
Apollo School Jr. High 10100 Dee Road	1974	Meyer Bene Inc.		$1,994,889.00
(A)Central Jr. High School 8955 Greenwood Ave. Niles, Illinois (B)Washington Grade School 2710 Golf Rd. Glenview, Illinois (C)Viola E. Nelson Grade School 8901 N. Oconto St. Niles, Illinois	1972	J. A. Benlow & Co.		$127,840.00
(A)Mark Twain Grade School Des Plaines, Illinois	1973	J. A. Benlow & Co.		$116,431.00
(B)Woodrow Wilson Grade School Niles, Illinois	1973	J. A. Benlow & Co.		$116,431.00
Jr. High School	1969	C. C. Marshal Construction Co.		$1,373,992.00
Bullard Elementary School	1970	J. A. Benlow & Co.		$41,250.00
EAST PRAIRIE COMMUNITY SCHOOL DIST.73, Skokie, Illinois				
East Prairie School	1969	Gamm Construction		$73,430.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ELGIN UNITED SCHOOL DIST.46 Elgin, Illinois				
Elgin Central High School	1974	John C. Unrah		$254,847.00
Elgin Central High School Phase II	1973	Schroeder & Unrah		$82,468.00
Elgin Central High School	1973	Lamp Const. Co.		$28,730.00
Larkin High School	1974	Lamp Const. Co.		$349,727.00
Oak Hill Elem School Glendorf Rd.	1971	Simmett Builders Inc.		$32,507.00
Elementary School (Washington Elementary School, Chicago, Ill.)	1972	Simmett Builders Inc.		$124,480.00
Sheridan Elementary School	1972	Lamp Const. Co.		$834,904.00
(A)Streamwood Elementary School 404 Streamwood Blvd. Streamwood, Illinois (B)Laurel Hill Elem. School 1750 Laurel Street Hanover Park, Illinois	1973	Erwin Schall		$41,487.00
(A)Kimball Jr. High 451 N.McLean Streamwood, Illinois (B)Clinton Elem. 770 E. Hill Streamwood, Illinois (C)Woodland Heights Elem. 900 Park Blvd. Streamwood, Illinois (D)Highland Elem. 1221 Highland Streamwood, Illinois	1973 1973 1973 1973	Schroeder & Unrah Dew Inc. Schroeder & Unrah Erwin Schall		$280,667.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ELGIN UNITED SCHOOL DIST 46 Elgin, Illinois continued				
Southeast Jr. High School	1969	Builder's Inc. Simmett		$1,979,300.00
(Grant Elementary School (Garfield Elementary School (Lowry Elementary School	1969	T & H Construction		$85,964.00
(McKinley Elem.School (Wing Elementary School (Columbia Elementary School	1969	E. F. Mueller		$73,213.00
Kimball Grade School Emerson Grade School Field Grade School Jackson Grade School Jefferson Grade School Washington Grade School Sandburg Jr. High School Elmhurst, Illinois	1970	Elmore Corporation		$72,430.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ELMHURST COMMUNITY UNIT SCHOOL DISTRICT 205, Elmhurst, Illinois				
York Community High School St. Charles Road	1974	Rebarcad Builders, Inc.		$102,649.00
Willowbrook High School 2250 South Ardmore Villa Park, Illinois	1973	Elmore Corp.		$423,189.00
York Community High School 355 West St. Charles Rd. Elmhurst, Illinois	1974	Couch & Goss Inc.		$565,528.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ELMWOOD PARK COMMUNITY UNIT 401 Elmwood Park, Illinois				
(A)Elmwood Park High School 8201 W. Fullerton (B)John Mills Elem.School 76th & Diversey (C)Elmwood Elem.School 2329 W.76th	1971	Blaze & Sons		$80,000.37
(A)Elmwood Park High School (B)John Mills Elem School (C)Elmwood Elem School (D)Elmwood Elem.School	1972	Blazon & Sons Const.Co.		$48,700.00
(A) Elmwood High School 8201 W. Fullerton Ave. (B)Ella Elementary School 7606 Cortland Ave. (C)Elmwood Elem. School 3219 W.76th Ave. (D)Mills Elem.School 76th Ave. & Diversey	1973	Slezak Const. Co.		$179,990.00
(A)Elmwood Park High School (B)Ella Elem.School (C)Elmwood Elem.School (D)Mills Elem.School	1974	Slagsvo Const. Co.		$109,400.00
Elmwood Elementary School John Mills Elementary School	1969	Ruby Construction Co.		$106,249.00
5 Mobile Classroom Units at Ella Elem.School,Elmwood Elem. School,Elmwood Pk.High School,	1971	Slezak Construction Company		$17,430.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
EVANSTON COMMUNITY CONSOLIDATED SCHOOL DIST.65,Evanston,Ill.				
(A)Noyes School Noyes & Naples Streets (B)Haven School Lincoln St.&Prairie Ave. (C)Nichols School Greenleaf & Elmwood Sts.	1972	Gebhardt Const.Co.		$136,341.00
(A)Central Elem.School 828 Main St. Evanston,Illinois (B)Bitler Middle School 2424 Lake Evanston, Illinois (C)Walker Elem.School 3601 Church St. Skokie, Illinois	1973	Gebhardt Const. Co.		198,335.00
Evanston Joint Facility for Training Mentally Handicapped 944 Ashland Avenue,Evanston	1973	R. Rudnick & Co., Inc.		$522,225.00
Miller Elementary School Dempster & Hinman Sts.	1972	W. B. Olson, Inc.		$410,200.00
(A)College Hill Elementary School (B)Washington Elem.School (C)Dawes Elementary School (D)Lincolnwood Elementary School	1970	Klosure Corp.		$150,960.00
Lincoln School	1970	W. B. Olson Inc.		$185,000.00
Willard Elem.School	1970	Mayer and Gibhardt		$176,850.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
Fenton High School Dist.100 Bensenville, Illinois				
Fenton High School 1000 West Green	1974	Fred Berglund & Son, Inc.		$5,570,867.00
Fenton High School	1971	Midway Construction & Engineering		$177,135.00

FOREST PARK COMMUNITY SCHOOL DIST.91, Forest Park,Illinois				
(A)Betsy-Ross Elem.School 13th & Marengo (B)Field Stevenson Elem.School 925 Beloit Ave. (C)Grant White Elem.School Circle & Randolph	1973	Karl Riche Jr.		$54,852.00
FOREST RIDGE Com.SCHOOL Dist.# 142,Oak Forest, Illinoi				
New Elem.School 151 St.(W.of Cicero)	1970	VeeSee Construction Co.		$450,000.00
FOX LAKE COM.SCH.DIST.114, Fox Lake, Illinois				
Shady Lane Junior School	1971			$454,646.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
GENEVA COMMUNITY UNIT 304 Geneva, Illinois				
Geneva Community High School 415 Logan Avenue	1974	Fred L. Ockerlund Jr. & Ass.		$4,190,480.00
Coultrap Middle School 1113 Rayton St.	1973	Fred L. Ockerlund Jr. & Ass.		$446,539.00
GLENBROOK HIGH SCHOOLS TOWNSHIP 225, Glenview, Illinois				
Greenhouse Glenbrook North High School	1974	Peter H. Winandy Sons		$22,877.00
Glenbrook North High School 2300 Sherwer Rd.	1973	Metro Engrg.Inc.		$271000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
GLEN ELLYN HIGH SCHOOLS TOWNSHIP 87, Glen Ellyn,Ill.				
Glenbard East High School 1014 S.Main St.,Lombard,Ill.	1972	Iron Fireman-Dunham Bush		$36,000.00
Glenbard East High School 1014 S.Main St.,Lombard,Ill.	1973	Kinnare Corp.		$313,246.00
Glenbard West High School 670 Crescent Blvd. Glen Ellyn, Illinois	1972	Abbot & Assoc.		$78,400.00
Glenbard West High School 670 Chestnut Blvd. Glen Ellyn, Illinois	1973	Coath & Goss		$62,913.00
Concession Stand Park & Butterfield Rd. Glen Ellyn, Illinois (Glenbard S.High School)	1972	C. W. Gaserud General Contrs.		$34,263.00
Glenbard W.High School 670 Crescent Blvd. Glen Ellyn, Illinois	1971	William C. Kuhlman Co.		$318,049.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
HARVARD COMMUNITY UNIT 50 **Harvard, Illinois**				
Harvard Jr. High School 1301 North Garfield & 1103 N. Jefferson	1974	Robert Hallen		$35,015.00

HAZEL CREST COMMUNITY SCHOOL **DIST.152-1/2,Hazel Crest,Ill.**				
(A)Woodland Elem.School 169th & Western (B)Warren Palm Elem.School 170th & Dixie Hwy. (C)Lincoln Elem.School 173rd & Throop	1972	Fryklund Const.Co.		$13,192.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
HIGHLAND PARK COMMUNITY SCHOOL **DIST.107, Highland Park, Ill.**				
Elm Place School 2031 Sheridan Rd. Green Bay School 1936 Green Bay Indian Trail School 2075 St. John Ave.	1974	B. Stromberg Const. Co.		$695,411.00
Elm Place Elem. School	1970	Kiendl Construction Co.		$1,828,800.00
HIGHLANDS COMMUNITY SCHOOL **DIST. 106, LaGrange, Ill.**				
Highlands Jr. High School 1850 Plainfield Rd.	1972	Gebhardt Const. Co.		$20,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
HIGHWOOD-HIGHLAND PARK COMMUNITY SCHOOL DIST.111, Highwood, Ill.				
Northwood Jr. High School	1970	J. H. Field & Co.		$159,789.00
(A)Northwood Jr. High School 945 North Ave. Highland Park, Illinois (B)Oak Terrace Elem. School 240 Prairie Avenue Highwood, Illinois	1973	Siljestrom Hayes Paving & Hans Jensen & Sons, Inc.		$27,992.00
HILLSIDE COMMUNITY SCHOOL DIST.93, Hillside, Illinois				
Elementary School Harrison & Wolf	1974	Richard Engberg & Co.		$28,003.00
Hillside Elem. School Wolf & Harrison	1972	The Kinnare Corp.		$161,827.00
Hillside Elem. School 4804 West Harrison	1972	Vertovec Const. Co.		$26,162.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ITASCA COMMUNITY SCHOOL ** DIST.10, Itasca, Illinois				
Franzen School Classroom Addn.	3/15/68	Krendl Construction Co.	Krendl Const. Masons	$182,650.00
A)Washington Addition	6/15/70	Midway Construction & Eng.	Hacco Const.	
B)Itasca Junior High Addn.	6/15/70	Midway Construction & Eng.	Jos. Szabo	$540,200.00 (A & B)

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
JOHNSBURG COMMUNITY SCHOOL DISTR.12,McHenry, Ill.				
Junior High School 2117 W. Church	1971	Joseph Frett & Sons		$421,857.00
Johnsburg Middle School W. Church Street	1972	Naelele Const. Co.		$433,533.00
Ringwood Elem.School	1971	William Simpson		$87,285.00
JOLIET SCHOOL DIST.86 Joliet, Illinois				
Rufford Jr.High School South Elem.School	1969	A. E. Berg		$750,000.00
Rufford Jr. High School Larkin & Ingalls	1973	Sam S. Nolenchi Const.Co.		$176,512.00
Carl Sandburg School	1973	Ben B. Caley		$15,486.00
Dirksen Jr. High School 203 S. Midland or.Jefferson	1973	Ben B. Caley Const.Co.		$141,198.00
Southwest Side Jr.HighSchool	1969	Robert C. Reegan		$1,260,000.00
Washington Jr. High School	1969	Industrial Concrete Co.		$415,500.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
KANKAKEE SCHOOL DIST.111 Kankakee, Illinois				
(A)Mark Twain Elem.School 22250 E.Court Kankakee, Illinois (B)Thomas Edison Elem.School 1998 Maple Kankakee, Illinois	1974	Tri-City Const.Co.		$42,500.00
KENILWORTH COMMUNITY SCHOOL DIST.38, Kenilworth, Ill.				
Elem.School Jr. High School	1969	Sollitt Summer Constr.Co.		$1,377,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LA GRANGE COMMUNITY SCHOOL DIST.102, LaGrange Park,Ill.				
Park Jr. High School 325 North Park	1974	J. A.Boulton Co & Gerber Iron Wks.		$1,500,000.00
LAKE PARK HIGH SCHOOL DIST. 40 108,Roselle, Illinois				
Lake Park High School	1971	F. J. Vanecky Builders		$73,133.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LEMONT HIGH SCHOOL TWP. DIST. 210, Lemont, Ill.				
Lemont High School, life safety code alterations, 800 Porter St., Lemont, Ill.	2/16/73	H. Luetig & Son.		$198,148

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LAKE ZURICH COMMUNITY UNIT* #95,Lake Zurich, Illinois				
Lake Zurich High School Phase I	19__	A. W. Nelsson & Co.		$1,500,500.00
High School (Phase II) Bay 63	1973	A. W. Nelsson & Co.		$1,257,402.00
Lake Zurich High School 300 Church St.	1974	A. W. Nelsson & Co.		$1,044,500.00
LEYDEN HIGH SCHOOL DIST.212 Franklin Park, Illinois				
School 3400 Rose St.,Franklin Park	1973	Mahaelr MILL & Lumber Co.		$5,500.00
East Leyden High School	1969	George Ankler		$76,730.00
East Leyden High School	1971	W. F. Fitzsimmons & Co.		$996,800.00
LINCOLNSHIRE-PRAIRIE VIEW COMMUNITY SCHOOL DIST.103 Lake Forest, Illinois				
(A)Laura B.Sprague Elem.School				
(B) Adlf Hoy Jr. High School				
(C)Daniel Wright Jr. High	1969	[illegible]		[illegible]

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LINCOLNSHIRE COMMUNITY SCHOOL DIST.74, Lincolnshire, Illinois				
Lincoln Hall Elem.School 6855 N.Crawford Ave.	1971	Arthur Goebelz		$210,416.00
Lincoln Hall Elem.School 6855 N. Crawford Ave.	1973	Ehrahn Carlson & Son		$30,529.00
Lincoln Hall Elem.School 6855 N.Crawford Ave.	1974	Rose Erickson Const.Co.		$40,250.00
Lincoln Elem.School	1971	Marvin Rankin		$11,350.00
Lincoln Hall Elem.School	1971	Arthur Goebelz Builders		$210,416.00
LINDOP(Broadview)COMMUNITY SCHOOL DIST.92, Broadview, Ill.				
Lindop School 24th St. & 18th Ave.	1974	Smith Builders		$4,000.00
Lindop Elem.School	1971	The Klemare Corp.		$34,889.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LISLE UNIT 202 * Lisle, Illinois				
High School, area between Yackley Rd. & DuPage River	11/6/72	Fred Quinn Construction Co.		$1,817,489
Administrative Office, 5207 Cooper Street	6/29/74	D B W Inc.		$48,446
Junior High School, 5207 Cooper Street	6/7/71	A. W. Nelsson		
Schlaeher Grade School 5205 So. Kingston	6/7/71	A. W. Nelsson		$573,000
Tate Woods Elementary School, 1736 Middleton	6/7/71	A. W. Nelsson		

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LOTUS COMMUNITY SCHOOL DIST. 10, Spring Grove, Illinois				
Storage Building Grass Lake Road	1973	Theo Vanderwerf Jr.		$12,990.00
LUDWIG-REED-WALSH COMMUNITY SCHOOL DIST.92, Lockport, Ill.				
Walsh School North at East	1973	Sam S. Malanchi Const. Co.		$50,000.00
(A)Reed 143rd Street (B)Ludwick Elem.Schools N. State Street	1972	Ben B. Cabay Const. Co.		$61,160.00
Ludwig Elem. School & Reed Elem. School	1970	Ben B. Cabay Constr.		$12,584.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
LYONS TOWNSHIP HIGH SCHOOL TOWNSHIP 204, LaGrange,Ill.				
Office Building 1305 W. Cossitt	1973	Frank Kasmas Sons, Inc.		$21,826.00
Auditorium (North Campus) 100 S. Brainard Ave.	1972	Coath & Goss Inc.		$548,086.00
Lyons Township High School S.Campus-4900 Willow Springs Rd.	1973	Meyer-Ross		$29,285.00
2 High Schools 100 S. Brainard Ave.(N.campus) 4900 Willow Springs Rd.(S. campus)	1974	Struebing Const. Co.Inc.		$205,985.00
MARKHAM COMMUNITY SCHOOL DIST. 144, Markham, Illinois				
(A) Pottawatomie Elem. School 171st & Homes Hazel Crest, Illinois (B)Canterbury Elem. School 3055 W. 163rd St. Markham, Illinois (C)McCaughry School 15652 S. Homan Markham, Illinois	1973	Chandler Const. Co.		$91,761.00
Chateaux Elem. School Pottawatomie Elem. School	1971	Stephan Construction Co.		$912,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MATTESON COMMUNITY SCHOOL DIST. 162, Matteson, Ill.				
Maint. Storage Bldg.	1974	Chandler Const. Co.		$52,151.00
Huth Upper Grades Center Gymnasium, 3718 W. 213th Pl.	1973	H. Lustig & Son		$41,000.00
Oakwood School Addn Richton Square School Addn.	1969	Fryklund Construction Company		$274,226.00
(A)Ill. Elem. School,Pk.Forest (B)Matteson Elem.School	1970	Chicago Heights Construction		$441,810.00
Sauk Elementary School	1970	Stephen Construction Company		$167,410.00
MAYWOOD COMMUNITY SCHOOL DIST. 89, Maywood, Illinois				
Roosevelt School 15th & Harvard Broadview, Illinois	1974	Kiendl Const. Co.		$169,350.00
(A)Emerson Elem.School 3rd Ave.&Washington (B)Garfield Elem.School 9th Ave.&VanBuren (C)Irving Elem.School 17th Ave.&WarrenSt. (D)Jane Addams Elem.School 910 Division St. (E)Lexington Primary School 5th Ave.&Lexington (F)Lincoln Elem.School 9th Ave. & Chicago				

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MAYWOOD COMMUNITY SCHOOL DIST.89, Maywood, Illinois (continued)				
(G)Melrose Park Elem.School 17th Ave.&Lake St. (H)Roosevelt Elem.School 15th Ave. & Harvard (I)Stevenson Elem.School North 20th & Hirsch (J)Van Buren Primary School 1204 Van Buren (K)Washington Elem.School 11th & Washington	1973	Peter J Poulos & Sons		$536,789.00
Emerson School Maywood, Illinois	1969	Linden Construction		$49,877.00
Garfield Elem. School	1970	William Kuhlman Company		$80,000.00
MAZON-VERONA-KINSMAN COMMUNITY UNIT 2, Mazon, Illinois				
Verona Elem. Bldg. Addn.	1970	Harvick Bros. Gen. Con		$73,320.00
Kinsman Elem. Bldg. Addn.	1970	John J. Bonchetti		$19,258.10
Mazon Elem. Bldg.Addn.	1970	Sam S. Molaschi, Sons.		$203,713.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MEDINAH COMMUNITY SCHOOL ** DIST.11, Medinah, Illinois				
Medinah Middle School 700 East Granville, Roselle,Ill.	1973	Don E. Carlson	J. & E. Duff	$161,115.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MINOOKA COMMUNITY CONSOLIDATED SCHOOL DIST.201, Minooka, Ill.				
(A)Minooka Elem.School(addn) 400 Coady Dr. (B)Minooka Jr.High School 305 Church St.	1974	Narvick Bros. General Contr.		$318,765.00
Elem. School, Minooka	1970	Phillips Hardware		$64,623.00
MORRIS HIGH SCHOOL DIST.101 Morris, Illinois				
High School 1000 Union Street	1973	Perkins Builders		$243,016.00
Art-Study Hall Annex Bldg.	1974	Ben Cabay		$185,760.00
MORTON GROVE COMMUNITY SCHOOL DIST.70, Morton Grove, Illinois **				
Gymnasium	1967	George Koehler		$117,963.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
MUNDELEIN HIGH SCHOOL CONSOLIDATED SCHOOL DIST.120, Mundelein, Ill.				
Mundelein High School 1350 W. Hawley Street Mundelein, Illinois	1973	R. L. Roth & Assoc.		$46,055.00
Mundelein High School Hawley Street	1974	D & D Const. Co.		$75,000.00
Mundelein High School	1970	W. R. Shield, Inc.		$74,539.00
NAPERVILLE UNIT 203 Naperville, Illinois				
Maplebrook Elementary School	8/24/73	R. T. Milford		$1,203,449
Naperville North High School Ogden Ave. & Mill St	2/12/74	Naperville Excav Co. (substructure) Joseph J. Duffy Co.		$6,268,145

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
NILES TOWNSHIP HIGH SCHOOL TOWNSHIP 219, Skokie, Ill.				
Niles Township Community H.S.West Oakton Ave. At Edens Exp. Skokie, Illinois	1972	Arthur M. Goebelt Bldrs.		$360,672.00
Niles West High School Oakton at Edens	1973	Gebhardt Co.		$498,814.00
Niles North High School 9800 Lawler Skokie, Illinois	1974	George Enkler & Sons		$235,690.00
Off Campus Learning Center 7700 Gross Pt. Rd. Skokie, Illinois	1972	Aspen Enterprises, Inc.		$76,855.00
Niles Township High School West & North	1969	Monroe Construction & Engineering		$212,900.00
Niles Township High School	1971	W. S. Olson, Inc.		$364,924.00
MORRIDGE COMMUNITY SCHOOL DIST. 80,Morridge, Illinois				
Office (A)Giles Elem.School (B)Leigh Elem.School	1972	Summer Constr.		$34,485.00
James Giles Elem.School	1969	Edvin Anderson		$26,290.00
John C. Leigh Elem. School	1970	J. A. Boulton & Co.		$34,290.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
NORTHBROOK COMMUNITY SCHOOL DIST.27, Northbrook, Ill.				
Wood Oaks Jr.High School Walters Ave. & Sanders Rd.	1972	Marchal Const. Co.		$147,290.00
Shabonee Junior High School 2929 Shabonee Tr.	1974	Herman Ballerman		$46,775.00
Grove Elementary School 1000 Kingston Rd. Northbrook, Illinois	1971	A. W. Matsuno & Co.		$281,000.00
NORTHBROOK COMMUNITY SCHOOL DIST.30, Northbrook, Illinois				
Willowbrook Grade School	1970	Meyer-Rose, Inc.		$350,000.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
OAK LAWN (NORTH PALOS) COMMUNITY SCHOOL DISTRICT 117, Oak Lawn, Illinois				
Quin School Addn. 7840 West 103rd Palos Hills, Illinois	1970	E. C. Anderson	Davis & Bonds ($31,788.00)	
Conrady Jr. High Addn. 97th & Roberts Rd. Hickory Hills, Illinois	1970	E. C. Anderson	Davis & Bonds ($47,855.00)	
Dorn School Addn. 7625 West 92nd Hickory Hills, Illinois	1971	E. C. Anderson	Davis & Bonds ($45,000.00)	
Glen Oaks School	1974	E. C. Anderson	Davis & Bonds ($34,390.00)	
Conrady Jr. High	1974	E. C. Anderson	Davis & Bonds ($66,700.00)	
Quin School	1974	E. C. Anderson	Davis & Bonds ($35,000.00)	
Quin Primary Center	1974	E. C. Anderson	Davis & Bonds ($31,290.00)	

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
OAK LAWN (RIDGELAND) COMMUNITY SCHOOL DIST.122, Oak Lawn,Ill.				
(A)Lier School 9101 S. Pembroke Ln (B)Harnew School 9100 S. Austin (C)Dearborn Hts. School 9620 S.Normandy (D)Columbus Manor School 97th & Mayfield	1974	Chandler Construction Co.		$90,000.00
Simmons Elem. School 6450 W. 95th Street	1972	B. C. Bisano Constr. Co.		$12,584.00
(A)Simmons Jr. High School (B)Dist.Admin. Bldg. 6450 W. 95th Street	1974	Geraghty Const. Co.		$2,275,490.00
(A)Lieb School 9101 S. Pembroke Ln. (B)Harnew School 9100 S. Austin (C)Columbus Manor School 9620 S. Normandy	1974	Klein Constr. Co.		$1,008,032.00
(A)Harnew Elem. School (B)Lieb Elem.School	1970	V. C. Construction Co.		$21,533.00
Harnew Elem. School	1971	Geraghty Construction Co.		$14,142.00
Simmons Elem. School Harnew Elem. School Columbus Manor Elem.School Lieb Grammar School Dearborn Heights Elem. School	1969	Geraghty Construction Co.		$41,552.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
OAK LAWN (SOUTH STICKNEY) COMMUNITY SCHOOL DIST.111 Burbank, Illinois**				
Kennedy School 7700 S. Central	1965	Jackman Construction		$870,600.00
McCord School 85th & Nashville	1965	Jackman Construction		*
*Single contract in the amount of $870,600.00 covered the above two schools				
Burbank School Addition 82nd & Linder	1965	Wil-Frada Inc.		$215,970.00
Admin.& Storage Bldg. North of 77th & Central	1973	Geraghty Constr. Co.		$393,054.00
West View School	1970	Baletow Constr. Co.		$30,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
OAK PARK COMMUNITY SCHOOL DIST.97, Oak Park, Illinois				
Washington Irving School 1125 S. Cuyler	1974	Meyer-Rose Inc.		$767,161.00
Hawthorne Elem. School 416 S. Ridgeland	1973	Geo. Kohler & Sons, Inc.		$19,960.00
Holmes Elem.School 508 N. Kenilworth	1973	George Kohler & Sons, Inc.		$757,000.00
John Greenleaf Whittier School 713 N. Harvey	1974	Meyer-Rose, Inc.		$977,859.00
(A)Beye Elem.School 230 Ontario St. (B)Irving Elem.School 1125 S. Cuyler (C)Horace Mann School Kenilworth Blvd. & Division	1972	The Elmore Corp.		$162,881.00
Longfellow School Emerson School	1970	Kiewit Constr. Co.		$1,589,471.00
ORLAND PARK COMMUNITY SCHOOL* DIST.135, Orland Park, Ill.				
Orland Center School	1969	Geraghty Constr. Co.		$221,221.00
Orland Park School Orland Park Center School	1969	Chicago Heights Constr.Co.		$25,272.00
Orland Park Jr. High School 14855 W.Avenue	19??	Robert Reagan, Inc.		$399,772.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PALATINE HIGH SCHOOLS TOWNSHIP* Dil. Palatine, Illinois				
William Fremd High School	1972	George Kohler & Sons, Inc.		$141,900.00
Schaumburg High School Schaumburg, Illinois	1973	James W. Hardy Co.		$29,000.00
McElroy Admin. Center 1750 Roselle Rd.	1973	Norman Bullerman		$301,365.00
Conant High School 700 East Cougar Rd.	1974	Norman Bullerman		$473,627.00
Palatine High School Hoffman Estates, Illinois	1971	Turpan Constr. Co.		$6,644,390.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PALISADES COMMUNITY CONSOLIDATED SCHOOL DIST.180, Hinsdale,Ill.				
Palisades Elem.School 91st & Rt.83, Hinsdale	1970	W. F. Fitzsimmons & Co.		$263,143.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PALOS HEIGHTS COMMUNITY SCHOOL DIST.128, Palos Heights,Ill.				
(A)Indian Hill School 128th & Austin (B)Chippewa School 12425 S. Austin Ave. (C)Navajo Heights School 127th St.& 69th Ct. (D)Crab Orchard School 6610 W. Highland Dr. (E)Arrowhead School 6610 W. Highland Dr.	1974	Allan Mack & Sons, Inc.		$1,818,058.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PALOS PARK COMMUNITY CONSOLIDATED SCHOOL DIST.118, Palos Pk., Ill.				
Palos West Elem. School 12700 S. 104th Street	1973	Polonia Const. Co.		$524,000.00
(A)Palos South Jr. High School Palos Park, Illinois (B)Palos East Elem. School Palos Heights, Illinois	1973	Polonia Constr.Co. & Carlson Asphalt($13,768.) ($90,400.00)		$104,168.00
Palos Park Elem.School Palos Park, Illinois	1970	Stage Custom Contractors		$35,000.00
Palos East Elem.School 7700 W. 127th St.	1971	Warchol Construction		$31,940.00
PARK FOREST COMMUNITY SCHOOL DIST.163, Park Forest,Illinois				
(A)Mohawk Elem.School 301 Mohawk (B)Sauk Trail Elem.School 240 S. Orchard Dr.	1973	Stagg's Custom Contrs. Inc.		$19,459.00
Dogwood Westwood School	1974	Stagge Custom Contr. Inc.		$57,164.00
Beacon Hill Elem.School 401 Concord Dr. & Blackhawk Jr. High School 375 Oswego & Lakewood Elem.School 350 Lakewood Blvd.	1971	G. O. Nelson & Sons		$420,659.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PARK FOREST COMMUNITY SCHOOL DIST.163, Park Forest, Ill. (continued)				
Maintenance Building 240 S. Orchard Dr.	1971	Chandler Constr. Co.		$32,131.00
PLAINFIELD CONSOLIDATED SCHOOL DIST.202, Plainfield, Illinois				
Elem. School Canton Farm Rd. & Essington Rd.	1972	Mazzucco Const. Co.		$857,000.00
High School Admin.& Storage Facility, 612 Commercial	1973	Arrow Const.		$208,555.00
Plainfield High School 612 Commercial St.	1973	Consolidated Engrg. Div. of Azzarelli Const. Co.		$1,317,461.00
Plainfield High School	1969	Stonitsch & Sons		$178,583.00
Crystal Lawns Elem.School	1969	Cunning Construction Co.		$119,996.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
POSEN-ROBBINS COMMUNITY SCHOOL DIST.143-1/2, Posen, Illinois				
Gordon Upper Grade School 141 & Harrison	1973	Chicago Hts. Const. Co.		$14,088.00
Turner Elem.School 135th & Hamlin	1973	Chgo.Hgts.Const.Co.		$15,425.00
Posen Elem.School	1970	Stuchly Enterprises		$17,900.00
PROSPECT HEIGHTS COMMUNITY SCHOOL DIST.23, Prospect Heights, Illinois				
MacArthur Jr. High Schol Sullivan Grade School Betsy Ross Grade School	1970	Walsen Construction Co.		$835,298.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PROVISO TOWNSHIP HIGH SCHOOL TOWNSHIP 209, Maywood,Ill.				
(A)Proviso East TwpHigh School Maywood, Illinois (B)Proviso West Twp. High School Hillside, Illinois	1974	Polcnis Const. Co.		$550,000.00
Proviso W.Twp.High School Wolf Rd. & Harrison St.	1972	Solberg & Sullivan Co.		$427,664.00
(A)Proviso East Twp.High School First & Madison Sts. Maywood, Illinois (B)Proviso West Twp. High School Wolf Rd. & Harrison St. Hillside, Illinois	1972	Solberg & Sullivan Co.		$50,698.00
Proviso East High School First Ave. & Madison	1971	Solberg & Sullivan Co.		$25,165.00
(A)Proviso East Twp.High School (B)Proviso West Twp.High School	1972	Solberg & Sullivan Co. Inc.		$253,229.00
Special Education Bldg.	1974	Arthur H. Goebelt Bldrs.		$218,734.00
Proviso East Twp.High School Proviso West Twp.High School	1974	Arthur H. Goebelt		$321,600.00
Proviso W.High School Proviso E.High School	1971	Meyer-Boss, Inc.		$994,573.00
Proviso E.High School Proviso W. High School	1971	Meyer-Boss, Inc.		$68,387.00
Proviso East & West High Schools	1970	Solberg & Sullivan Co., Inc.		$396,185.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
PUFFER & HEFTY COMMUNITY SCHOOL DIST.69, Downers Grove,Ill.				
Agnew Hefty Jr. High School Belmont & Haddow	1972	A. H. Viren & Sons, Inc.		$56,600.00
Puffer Elem.School	1970	Teplar & Clark Ltd.		

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
REAVIS HIGH SCHOOL TOWNSHIP 220, Burbank, Illinois				
Reavis High School 7710 Austin Blvd.	1973	Fred Berglund & Son, Inc.		$390,504.00
Reavis High School	1970	Strock & Associates		$25,000.00
Driver Education Center 7700 Moody,Reavis High School	1971	J. A. Boulton & Co.		$71,189.00
REED CUSTER HIGH SCHOOL TOWNSHIP 220, Burbank, Illinois				
Reed Custer High School	1973	Sam S. Molaschi & Sons		$34,250.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
RHODES COMMUNITY SCHOOL DIST.84-1/2, River Grove, Ill.				
Rhodes School 8931 W. Fullerton	1972	Goodwin Const. Co.		$127,361.00
Rhodes School	1973	Aspen Enterprises		$63,974.00
Rhodes Elem.School	1969	Goodwin Constr. Co.		$117,394.00
Rhodes School	1971	C. J. Harris		$78,903.00
RICH TOWNSHIP HIGH SCHOOL # 227, Park Forest, Illinois				
Rich Central High School 203rd & Governors Hwy.	1973	Henry W. Holtman		$3,000.00
East Campus High School	1971	Dinaso & Sons		

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
RILEY COMMUNITY CONSOLIDATED SCHOOL DIST.18, Marengo, Ill.				
Riley Elem. School	1974	Beelein Const. Co.		$406,295.00
RIVERSIDE-BROOKFIELD HIGH SCHOOL TWP.208, Riverside,Ill.				
Riverside-Brookfield Twp.High Sch. First Ave. & Ridgewood Rd.	1973	Fred Berglund & Son		$76,316.00
RIVER TRAILS COMMUNITY SCHOOL DIST.26, Mt. Prospect, Illinois				
River Trails Jr.High School 1000 Wolf Rd.	1972	William C. Kuhlman Co.		$470,366.00
(A)Indian Grove Elem.School 1340 Burning Bush (B)Euclid Ave.Elem.School 1211 Whelling Rd. (C)River Trails Jr.High School 100 Wolf Rd. (D)Freshanville Elem.School 1400 E. Foundry Rd.	1974	Edwin Anderson Const. Co.		$141,575.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
ROUND LAKE COMMUNITY UNIT 116 Round Lake, Illinois				
Indian Hill Grade School 1920 Lotus	1973	Polonia Const. Co.		$491,970.00
Round Lake Beach Elem.School 1420 N. Grove Ave.	1972	Polonia Const. Co.		$565,438.00
Raymond Ellis Elem. School 720 W. CentralPk. Rd.	1972	Polonia Const. Co.		$959,647.00
Beach School	1971	Polonia Construction Co.		$196,624.00
Fin Arts Bldg. Cedar Lake Rd.	1971	Eric Bergstrom & Son		$158,000.00
R.U.C.E. COMMUNITY UNIT 3 Reddick, Illinois				
Reddick High School Main Street	1973	Johnson Downs Const. Co.		$86,263.00
Rettick Elem.School	1970	O. L. Martin & Sons		$42,833.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
SALT CREEK COMMUNITY SCHOOL DIST. 48, Villa Park, Illinois				
Special Education Bldg. Villa Ave. N.of Van Buren St.	1972	Solberg & Sullivan		$539,226.00
Albright School 1110 S. Villa	1974	Richard Engberg & Co.		$20,450.00
SCHILLER PARK COMMUNITY SCHOOL DIST.81, Schiller Pk, Illinois				
Lincoln Elem. School 4050 Wagner	1971	J. A. Boulton Co.		$44,600.00
Lincoln Elem. School 4050 Wagner Ave.	1974	Malawski & Sons Const. Co.		$351,592.00
SIEDEN PRAIRIE COMMUNITY SCHOOL DIST.159, Matteson, Illinois				
Sieden Prairie Elem.School 725 Notre Dame Dr.	1973	Peter Hansen & Son		$25,952.00
Sieden Prairie Elem. School	1972	Peter Hansen & Sons, Inc.		$131,950.00
Neil A. Armstron Elem. School Lakewood subdivision	1972	R. H. Roberts Const. Co.		$443,151.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
SKOKIE COMMUNITY SCHOOL DISTRICT 68, Skokie, Ill.				
Devonshire Grade School Highland Grade School James Simpson Grade School	1969	Meyer & Gebhart		$76,479.00
SKOKIE COMMUNITY SCHOOL DIST.69, Skokie, Illinois				
Lincoln Jr. High School 7839 Lincoln Ave.	1972	Gebhardt Const. Co.		$65,222.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
SOUTH HOLLAND COMMUNITY SCHOOL DIST.151, South Holland, Illinois				
Coolidge School 155 & 7th Ave. Phoenix, Illinois	1973	Hobson Const.		
Eisenhower Elem. School 16001 Minerva Ave. 156th & Orchid Dr.	1974	J. Stoltz Contr. Inc.		$26,539.00
Madison Elem. School 156th & Orchid Dr.	1972	Stagg's Custom Contrs. Inc.		$24,052.00
STICKNEY COMMUNITY SCHOOL ** **DIST.110, Chicago, Illinois**				
Charles J. Saks School 50th & Long Ave. (2nd Floor)	1967	Star Builders		$194,300.00
Charles J. Saks Sch. (community room)	1971	Star Builders		$85,000.00
Charles J. Saks Sch.(band room)	1972	Star Builders		$82,000.00
SUNNYBROOK COMMUNITY SCHOOL DIST.171, Lansing, Illinois				
Nathan Hale Elem. School 19055 Burnham Ave.	1974	Klouse Const. Co.		$14,248.00
Nathan Hale Elem. School	1971	Stephenson Constr. Co.		$188,023.00

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Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
THORNTON COMMUNITY SCHOOL DIST.154, Thornton, Illinois				
Walcott Elem. School 200 Walcott St.	1972	Geoppo Const.		$29,227.00
THORNTON TOWNSHIP HIGH SCH. TWP.205, Harvey, Illinois				
Portable Classroom Bldg. 151st & Broadway	1973	Mobile Office		$19,514.00
Thornridge High School 15000 Cottage Grove Rd.	1974	Madory		$1,253,989.00
Thornton Twp.High Sch. 151st & Broadway	1974	Madory		$186,880.00
Thornton High School 151 & Broadway	1972	Newgren Const. Co.		$26,984.00
(A)Thornridge High School Dolton, Illinois,15000 Cottage (B)Thornton High School Harvey,Ill.,151 & Broadway	1974	Coath & Goss		$1,289,165.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
TINLEY PARK COMMUNITY SCHOOL DIST.146, Tinley Pk., Illinois				
Arnold Kruse Elem. School 154th & 77th Ave. Orland Pk., Illinois	1972	A. E. Berg Const.		$666,927.00
Memorial Elem. School 6701 W. 179th St. Tinley Park, Illinois	1974	Hanson & Sons, Inc.		$15,581.00
Administration Bldg. 17316 South Oak Park Ave. Tinley Park, Illinois	1973	Stagg's Custom Contrs. Inc.		$19,399.00
Central Jr. High School Tinley Park, Illinois	1969	Stephan Constr. Co.		$162,057.00
Central Jr. High School Memorial Elem. School Tinley Park, Illinois	1970	Stephan Const. Co.		$500,000.00
TROY COMMUNITY CONSOLIDATED SCHOOL DIST.30C, Joliet,Ill.				
Troy Grade School Rte. 59	1973	Sam S. Milaschi Const. Co.		$7,688.00
Troy Elem. School Joliet, Illinois	1970	Mazzucco Const. Co.		$796,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
UNION CONSOLIDATED SCHOOL DIST.8, Union, Illinois				
Evergreen Park Elem. School 6506 National St. Union , Illinois	1973	Roy Williams Co.		$26,641.00
WARREN TWP.HIGH SCHOOL 121 Gurnee, Illinois				
Warren Twp.High School 500 O'Plaine Rd.	1974	Polonia Const. Co.		$133,000.00
Warren Twp. High School	1974	Joseph J. Henderson		$61,010.00
Warren Twp. High School	1973	Joseph J. Henderson		$589,619.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WAUKEGAN COMMUNITY UNIT 60 Waukegan, Illinois				
West Campus High School and East Campus High School Brookside Ave. & Washington St.	1974	Joseph J. Henderson		$42,490.00
West Campus High School 2325 Brookside Ave.	1974	J. J. Henderson		$148,846.00
West Campus High School	1974	Joseph J. Henderson		$2,169,712.00
West School	1971	Polinia Const. Co.		$35,000.00
(A)Clark Elem. School 601 Blanchard Rd. (B)McCall Elem. School 3215 McAree (C)Jack Benny Jr. High School 1401 Montesano Ave.	1974	W. M. Const. Co.		

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WESTCHESTER COMMUNITY SCHOOL DIST.92-1/2, Hillside, Ill.				
Grant H. Britten School 10110 Gladstone Ave.	1974	A. H. Viren & Son		$170,000.00
WEST CHICAGO COMMUNITY SCHOOL DIST.33, West Chicago, Ill.				
Pioneer Elem. School 615 Kenwood Ave.	1973	Sundene Const. Co.		$118,460.00
West Chgo. Jr. High School 238 Hazel Street	1973	Sundene Const. Co.		$38,893.00
Homer Elem.School	1970	R. C. Lif Const.		$4,584.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WESTMONT UNIT 201 Westmont, Illinois				
Westmont Jr. High School Oakwood & 39th Street	1973	Meyer Boss Inc.		$1,797,755.00
(A)Miller Elem.School 125 W. Traube (B)Central Elem. School 200 N. Linden Ave. (C)South Elem.School 133 S. Grant Street	1974	Sundene Const. Co.		$75,000.00
WEST NORTHFIELD COMMUNITY SCHOOL DIST.31, Northbrook, Illinois				
Winkelman Grade School 3030 Sanders Road Northbrook, Illinois	1972	Norman Bullerman		$20,471.00
Receiving & Storage Bldg. Stanley Field School 2055 Landwehr Rd. Northbrook, Illinois	1972	Norman Bullerman		$186,826.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WHEATLAND CONSOLIDATED SCHOOL DIST.40C, Plainfield, Illinois				
Wheatland Elem. School Rte.1 Plainfield, Illinois	1972	Fancsali Bros. Inc.		$166,744.00
WHEATON SCHOOL UNIT 200 Wheaton, Illinois				
Wheaton Central High School	1969	T & H Constr. Co.		$296,614.00
WICKERT COMMUNITY CONSOLIDATED SCHOOL DIST.262, St.Anne,Ill.				
Wickard Elem.School	1969	O. L. Martin & Sons		$100,000.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WILMETTE COMMUNITY SCHOOL DIST.39, Wilmette, Illinois				
Howard Jr. High School	1969	W. F. Fitzsimmons Co.		
Central School 900 Central Ave. Wilmette, Illinois	1970	W. B. Olson, Inc.		$28,000.00
WILMINGTON-LORENZO COMMUNITY* UNIT 209U, Wilmington,Ill.				
Elementary School	1969	Colby Erickson Inc.		$196,835.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WILMOT COMMUNITY SCHOOL DIST.110, Deerfield,Ill.				
Wilmot-South Park --and Woodland Elem.School	1972	J. M. Field & Co.		$26,101.00
Deerfield Elem.School	1969	J. M. Field & Co.		$16,401.00
WINFIELD COMMUNITY SCHOOL DIST.34, Winfield, Ill.				
Junior High School Park & Summit Streets Winfield, Illinois	1971	Watson Construction Co.		$817,210.00
WINNETKA COMMUNITY SCHOOL DIST.36, Winnetka, Illinois				
Crow Island Elem.School 1112 Willow	1972	Alan Const. Co.		$122,807.00
Greeley & Hubbard Schools	1972	North Shore Builders		$17,309.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
WOODSTOCK COMMUNITY UNIT 200, Woodstock, Illinois				
Greenwood Elem.School 4618 Greenwood Ave. Woodstock, Illinois	1973	Joseph Frett & Son		$80,000.00
Woodstock High School	1969	Joseph Frett & Sons		$44,990.00
WORTH HIGH SCHOOL DIST.218 Worth, Illinois				
Dwight D. Eisenhower 12700 S. Sacramento Blue Island, Illinois	1972	Ferguson & Johnson Const.Co.		$73,638.00
Northeast High School 107th & Kenton Street Oak Lawn, Illinois	1972	D. C. Dinaso Const. Co.		$56,217.00
H. L. Richards High School 10601 S. Central Avenue Oak Lawn, Illinois	1972	C. O. Nelson & Sons		$69,288.00

Project Name and Address	Contract Date	General Contractor	Mason Contractor	Project Cost
YORKVILLE COUNTY SCHOOL DIST. #2 Yorkville, Illinois				
New Yorkville Elem.&Jr. High School, Yorkville, Illinois	1967	Desmond Construction		$578,671.00

Affidavit to Plaintiffs' Supplemental Answers

State of Illinois)
) SS.
County of Cook)

AFFIDAVIT

D. ALAN HARRIS, being first duly sworn on oath deposes and says that he is an attorney licensed to practice law before the District Court for the Northern District of Illinois and is one of the attorneys representing plaintiffs in the above-entitled cause; that he has executed this affidavit in support of the supplemental answers to defendants First Set of Interrogatories filed herewith; and that affiant has personal knowledge of the information set forth in Schedule I attached herewith by reason of his personal investigation of the information therein contained and his direct supervision of the collection of such information by others.

1. Schedule I consists of a tabulation of counties, municipalities, housing authorities, school districts and other public entities that were specified as plaintiffs in the Amended Complaint filed herein, which the defendants sought to dismiss from the suit by reason of an alleged initial failure to return questionnaires to the defendants First Set of Interrogatories. Schedule I with respect to each of these public entities sets forth construction projects by name and address, the construction contract date, the name of the general and masonry contractor where available and the amount of the project cost. The information has been secured from the following sources:

A. A subpoena *duces tecum* was issued on September 16, 1974 directed to Dennis Dobleski head of a Division of McGraw Hill, publishers of the *Dodge Construction News*, to produce all copies of the *Dodge Construction News* from 1969 to date. Pursuant thereto an inspection of such *Dodge Construction News* reports began on December 12, 1974 with defense

counsel present. The *Dodge Construction News* is a daily publication which authoritatively compiles, abstracts and summarizes business records concerning the award of construction contracts, construction project data, and information secured from the State of Illinois and the concerned public entities in the greater Chicago area. The *Dodge Construction News* is utilized and relied upon by the construction industry including the manufacturers of concrete block and the general and masonry contractors utilizing concrete block.

B. Questionnaire answers were received after October 15, 1974 from 22 additional parties responding to the information thus tabulated. Information from these 22 returned questionnaires is included in Schedule I and identified by a single asterisk.

C. Information is also included in Schedule I of public entities from whom questionnaires were received prior to October 15th, but whom defendants erroneously listed in their motion to dismiss as non-responding governmental plaintiffs. These public entities who submitted their questionnaires prior to October 15, 1974, copies of which were furnished to the defendants, are 16 in number and are identified by a double asterisk.

D. In the case of four school districts listed as non-responding, the defendants were not aware that these school districts have been consolidated and a questionnaire was received from the consolidated school district, namely, Mazon-Verona-Kinsman Community Unit District No. 2, prior to October 15th. This school district was created by a merger of the following:

Kinsman Community Consolidated School
District 7C
Kinsman, Illinois
Mazon Community Consolidated School
District 40C
Mazon, Illinois

Mazon High School Township 97
Mazon, Illinois
Verona Community Consolidated School
District 10C
Verona, Illinois

2. The underlying data supporting the above tabulation as set forth in Schedule I in the case of the *Dodge Construction News* will be available in the form of xerox copies on file in affiant's Chicago office and the remaining *Dodge Construction News* supporting data are still under subpoena at the McGraw Hill Company and may be inspected there; the copies of the original questionnaire received from the public entities that have been identified either by a single or double asterisk are available in affiant's Chicago office for inspection.

3. Affiant is of the opinion and belief that the data tabulated in Schedule I truly and correctly sets forth the information contained in the aforementioned sources to his personal knowledge.

Subscribed and Sworn
to before me this 10th
day of January, 1975
Darlene F. Holtz
Notary Public

D. Alan Harris
D. Alan Harris

IN THE UNITER STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
Civil Action— No. 73 C 2427
(Title omitted in printing)

MOTION

Defendants, pursuant to the agreement of Plaintiff, State of Illinois, hereby move for the entry of an Order staying all discovery in this matter pending resolution by

the Court of Defendants' Motion to Dismiss pursuant to Rule 37, Defendants' Motion to Dismiss pursuant to Rule 21 and Defendants' Motion for Partial Summary Judgment. In support of this Motion, Defendants submit the attached Stipulation of the parties.

Respectfully submitted,

Alan L. Metz
Alan L. Metz
Attorney for Illinois Brick Co.
and on behalf of American Brick Co., Ampress Brick Co., Chicago Block Co., Heights Block Inc., Joliet Concrete Prod. Inc., Northfield Block Co., E. L. Ramm Co., Anjo, Inc., and Valley Block & Supply Co.

Alan L. Metz
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
Civil Action — No. 73 C 2427
(Title Omitted in printing)

STIPULATION

The parties, by their counsel, hereby stipulate that all discovery in this cause should be stayed pending a resolution by the Honorable William J. Bauer or any Judge sitting in his stead of Defendants' Motion to Dismiss pursuant to Rule 21, Defendants' Motion to Dismiss pursuant

to Rule 37 and Defendants' Motion for Partial Summary Judgment.

Lee A. Freeman, Sr.
Lee A. Freeman, Sr.
Attorney for Plaintiff
State of Illinois
Alan L. Metz
Alan L. Metz
Attorney for Illinois Brick Co.
and on behalf of all Defendants

"EXHIBIT A"
LETTERHEAD OF
FREEMAN, FREEMAN & SALZMAN
March 5, 1975

Honorable Alfred Y. Kirkland
United States District Judge
Federal Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

In re: Concrete Block Antitrust Cases
State of Illinois v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 73 C 2427

Dear Judge Kirkland:

It occurred to me after my brief appearance before your Honor on Thursday, February 20, with respect to the above-captioned action that a brief objective summary of the proceedings that have transpired to date in the Concrete Block Antitrust Cases would assist you in familiarizing yourself with this litigation. Realizing your tremendous workload, this summary is presented to help you in your preparation for the pretrial conference scheduled for Friday, March 28 at 9:00 a.m.

Copies of course, have been sent to all defense counsel.

Sincerely yours,
Lee A. Freeman
Lee A. Freeman

LAF:ms
cc: All Defense Counsel

SUMMARY OF CONCRETE BLOCK ANTITRUST CASES PREPARED FOR HONORABLE ALFRED Y. KIRKLAND

I. *Background of Litigation*

A. *Government Actions*

1. *Criminal: United States of America* v. *Ampress Brick Company, Inc. et al.*, N.D. Ill., 73 CR 312

On April 19, 1973 the Grand Jury returned an indictment charging 11 corporate defendants, which are engaged in the manufacture and sale of concrete blocks in the Greater Chicago Area, and seven officers of seven of the corporate defendants with having combined and conspired to raise, fix and stabilize the price of concrete block in the Greater Chicago Area in violation of Section 1 of the Sherman Act (15 U.S.C. §1). Pleas of *nolo contendere* were made by the defendants and accepted by the Court on November 9, 1973. Sentences, including fines, were imposed on December 13 and 17, 1973.

2. *Civil: United States of America* v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 73 C 1016

Also, on April 19, 1973, the United States filed a civil complaint, pursuant to 15 U.S.C. §4, against the same 11 corporate defendants charging them with having combined and conspired to raise, fix and stabilize the price of concrete block in the Greater Chicago Area in violation of Section 1 of the Sherman Act (15 U.S.C. §1). A consent decree terminating this action was entered on June 21, 1974

B. *Private Actions*

1. *Complaints Filed*

The following private treble damage actions, charging defendants with violations of Section 1 of the Sherman

Act and tracking, for the most part, the allegations in the Government complaints, have been filed:

a. *Corona Construction Company* v. *Ampress Brick Company, Inc. et al.*, N.D. Ill., 73 C 1082 (on behalf of masonry contractors class)

b. *Home Builders of America, Inc.* v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 73 C 1278 (on behalf of owners-builders class)

c. *Mor-Well General Contractors, Inc.* v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 73 C 1458 (on behalf of building contractors class)

d. *Normandy Hill, Inc. et al.*, v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 74 C 652 (contains no class allegations; plaintiffs are owners-builders)

e. *State of Illinois* v. *Ampress Brick Company, Inc., et al.*, N.D. Ill., 73 C 2427

All private actions, except the *State of Illinois* action, have been settled.

2. *Settlement*

All claims asserted in the *Corona Construction, Home Builders of America, Mor-Well General Contractors* and *Normandy Hill* actions were settled with the defendants named therein. The settlement was granted final approval by the Court on November 19, 1974.

It is clear from orders entered by Judge Bauer that the prior settlement does not include the claims asserted by plaintiffs in the *Illinois* action. Indeed, a letter to Judge Bauer dated September 10, 1974, from John E. Burke, Esq., on behalf of all defendants named in the *Illinois* action, specifically states:

> The defendants will not take the position that the alleged claims of the plaintiffs and the purported class members in the State of Illinois case have been released or in any way diminished because defendants

have settled the claims of masonry contractors and general contractors who purchased Concrete Block which was later sold to, or incorporated into, a building, or structure built for and owned by the State of Illinois, or the public entities named as plaintiffs, or the members of a purported hospital class, in part supported by public funds.

For your convenience, a copy of Mr. Burke's letter to the Court is attached.

3. *State of Illinois Action (73 C 2427): The only Remaining Action*

a. *Plaintiffs*

1.) Count I

In the first amended complaint filed by plaintiffs on July 11, 1974, Count I is brought by the State of Illinois on its own behalf, its departments, divisions and agencies and, pursuant to the authority contained in *Ill. Rev. Stat.* ch. 38, §60-7.8 (1969), on behalf of all municipalities and political subdivisions organized under the authority of the State and located in the Greater Chicago Area that have either purchased or directly or indirectly paid for concrete block and have sustained damages as a result of the violations alleged.

2.) Count II

Count II of the first amended complaint is brought by Edward Hospital and Harvard Community Memorial Hospital on behalf of themselves and pursuant to Rule 23, F.R. Civ. P., on behalf of a class consisting of all private hospitals in part supported by public funds, located in the Greater Chicago Area and that have either purchased or directly or indirectly paid for concrete block and have sustained damages as a result of the violations alleged.

b. *Defendants*

Eleven companies, who manufactured, distributed and sold concrete block in the Greater Chicago Area during the period covered by the complaint, are named as defendants. Attached hereto is a list of the defendants and counsel who represent them in this action.

c. *Definition of Terms Frequently Mentioned*

1.) "Concrete block" means a mixture of cement, water and aggregates, with or without the inclusion of other materials, which are molded and formed by machine into units for use principally in the building construction business.

2.) "Greater Chicago Area" means the area containing and consisting of Boone, DeKalb, Grundy, Kankakee, Kendall, LaSalle, Lake, McHenry, Cook, Kane, DuPage and Will Counties in Illinois; Lake and Porter Counties in Indiana; and Kenosha County in Wisconsin.

II. *Discovery in State of Illinois Action*

A. *Plaintiffs' Discovery*

1. *Grand Jury Documents, Subpoenas and Transcripts of Testimony*

Pursuant to orders of Chief Judge Robson entered June 26 and September 5, 1974, all documents collected and Grand Jury Subpoenas issued by the Antitrust Division of the Department of Justice in the course of its investigation of the concrete block industry in the Greater Chicago Area have been produced for inspection and copying by plaintiffs. In addition, Chief Judge Robson entered orders on October 30, 1974 and February 3, 1975, permitting plaintiffs the opportunity to inspect and copy transcripts of testimony before the grand jury, which had previously been disclosed to the defendants during the course of the criminal proceedings.

2. *Rule 33 Interrogatories and Rule 34 Requests for Production of Documents*

On October 30, 1974, plaintiffs in the *Illinois* action filed and served on each defendant "State of Illinois Interrogatories—First Set" and on November 8, 1974, "Plaintiffs' Requests for Production of Documents." Pursuant to an order entered by Judge Bauer on December 30, 1974, the parties met on January 17, 1975, to discuss plaintiffs' discovery requests. Defendants' objections thereto, if any, were to be filed by January 31, 1975 and all requests for production of documents and answers to interrogatories to which defendants had no objection were to be answered by February 14, 1975.

No objections have been received from defendants and no answers have been filed. It should be pointed out, however, that on February 4, 1975, Judge Bauer stayed all discovery pending resolution of the motions presently before your Honor for decision.

B. *Defendants' Discovery*

On November 13, 1973, "Defendants' First Set of Interrogatories" was served on plaintiffs in the Illinois action. Discovery was stayed over the next several months while defendants engaged in settlement negotiations with plaintiffs in the other actions. During the summer of 1974 plaintiffs' and defendants' counsel agreed to an arrangement whereby plaintiffs would attempt to provide much of the requested information by sending a questionnaire to their represented entities. Defendants were afforded the opportunity to inspect and copy the answers to these questionnaires in satisfaction of their interrogatories. On November 14, 1974, plaintiffs filed "Answers of the State of Illinois, et al. to Interrogatories 18 and 19 Propounded

by Defendants." In addition, plaintiffs on January 10, 1975 filed "Plaintiffs' Supplemental Answers to Defendants' First Set of Interrogatories."

On December 3, 1974, "Defendants' First Request for Production of Documents" was served on plaintiffs in the Illinois action. Responses have been delayed by plaintiffs until after the stay of discovery has been lifted.

III. *Motions Pending for Decision in State of Illinois Action*

A. *Defendants' Rule 37 Motion to Dismiss Governmental Entities who Failed to Answer Interrogatories*

Defendants' motion was filed on November 6, 1974. Plaintiffs' response was filed on January 10, 1975, and defendants' reply brief was filed on January 20, 1975. Unless the Court desires oral argument, the motion is ripe for disposition.

B. *Defendants' Rule 21 Motion to Drop All Governmental Plaintiffs Except the State of Illinois*

Defendants' motion was filed on December 20, 1974. Plaintiffs' response was filed on January 20, 1975, and defendants' reply brief was filed on February 5, 1975. Unless the Court desires oral argument, this motion is also ripe for decision.

C. *Defendants' Motion for Partial Summary Judgment*

Defendants' motion was filed on January 6, 1975. Plaintiffs' memorandum in opposition to defendants' motion was filed on February 4, 1975. Defendants' reply brief

was filed on February 28, 1975. Unless the Court desires oral argument, this motion is now *sub judice* and ripe for decision.

Respectfully submitted, for the State of Illinois, et al., plaintiffs

By *William J. Scott*
William J. Scott
Attorney General

By *John P. Meyer*
John P. Meyer

By *Lee A. Freeman*
Lee A. Freeman
Special Assistant
Attorney General

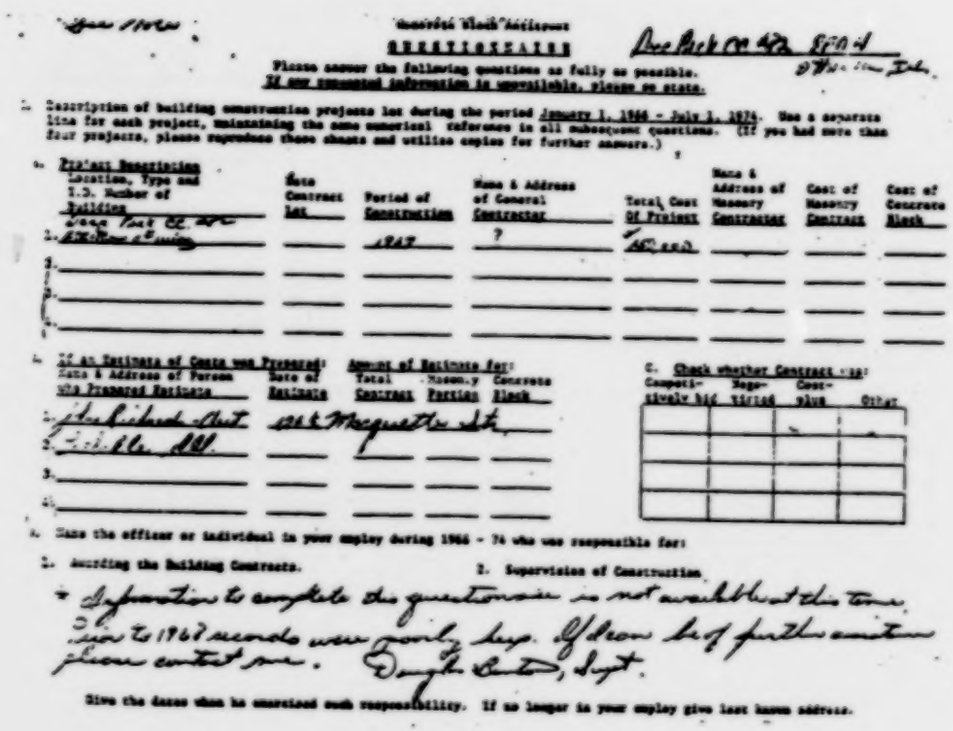
District Court Memorandum Opinion dated April 28, 1975 (see Petition for Certiorari, App. pp. 10-20).

Order dated April 28, 1975 granting summary judgment (see Petition for Certiorari, App. p. 21).

Order for final judgment dated May 6, 1975 (see Petition for Certiorari, App. p. 22).

Opinion of the United States Court of Appeals for the Seventh Circuit dated June 22, 1976 (see Petition for Certiorari, App. pp. 1-9).

Judgment of the United States Court of Appeals for the Seventh Circuit dated June 22, 1976 (see Petition for Certiorari, App. p. 23).



Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

1. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

Project Description Location, Type and I.D. Number of Building	Date Contract let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. [illegible]		1967	?	[illegible]			
2.							
3.							
4.							

2. If an Estimate of Costs was Prepared:

Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. [illegible]	1967	[illegible]		
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid | Negotiated | Cost-plus | Other

4. Name the officer or individual in your employ during 1966 - 74 who was responsible for:
1. Awarding the Building Contracts. 2. Supervision of Construction.

* Information to complete the questionnaire is not available at this time. Prior to 1968 records were poorly kept. Please call for further assistance. Douglas Carter, Supt.

5. Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

a. If a ... was ... specify (with date, amount, [illegible] name):
(Circle successful bidder. If all bids were rejected briefly state why.)

Name & Address of General Contractors who bid on Project	Amount of General Contractor's Bid	Name & Address of Masonry Contractors	Amount of Masonry Contractor's Bid	Amount of Concrete Block	Date General Contractor Bid Opened
1.					
2.					
3.					

11. Direct Purchases of Concrete Block - January 1, 1966 - July 1, 1974.

Date of Purchase	Name of Seller	Dollar Amount of Purchase	Unit Purchase Price: Size of Block	Unit Purchase Price: Price per Block	Purchase Order Number	Seller's Invoice Number	Name of Purchasing Agent (If no longer in your employ give last known address)

[illegible] ADDRESS OF CONFIDENTIAL ENTITY
[illegible] TO THIS QUESTIONNAIRE

I certify that the answers contained herein are true and correct to the best of my information, knowledge and belief.

Signature and Title of person preparing these answers

Date

Please complete answers to this Questionnaire by October 1, 1974. Return it to: Lee A. Freeman, Jr.
If you have any inquiries write or call Alan Harris at that address.

Special Assistant Attorney General
One IBM Plaza
Suite 3200
Chicago, Illinois 60611
(312) 467-6343

BEST COPY AVAILABLE

QUESTIONNAIRE Haverhill Sq. - Bay Ridge Sch. Dist. - 1529

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

1. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	Project Description Location, Type and I.S. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	21st Ave Bay Ridge Sch	196 Contract Let			Total all three			
2.	" Haverhill Elem Sch		Comp. Feb 1969	George Kolbert Inc	$5,127,822		Not Available	
3.	" Haverhill Jr. High Sch	Not Let		Arlington Heights				
4.								

2. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

3. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
Brady Education
Bradley + Bradley Architects + Engineers
Rock Prof. Bldg.

2. Supervision of Construction
Bradley + Bradley

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

E. If a contract was competitively bid, answer items (circle successful bidder. If all bids were rejected briefly state why.)

	Name & Address of General Contractors who Bid on Project	Amount of General Contractor's Bid	Name & Address of Masonry Contractors	Amount of Masonry Contractor's Bid	Amount of Concrete Block	Date General Contractor Bids Opened
1.	George Kolbert, Arlington Heights George Dreier, St. Charles (Low successful bidder)					
2.						
3.						

II. Direct Purchases of Concrete Block - January 1, 1966 - July 1, 1974.

Date of Purchase	Name of Seller	Dollar Amount of Purchase	Unit Purchase Data: Size of Block	Unit Purchase Data: Price per Block	Purchase Order Number	Seller's Invoice Number	Name of Purchasing Agent (If no longer in your employ give last known address)
			NONE				

NAME AND ADDRESS OF CONFIDENTIAL AGENT REFERRING TO THIS QUESTIONNAIRE:

Huntley Big Rock Community Unit School District #2, Huntley, Ill. 60520

I certify that the answers contained herein are true and correct to the best of my information, knowledge and belief.

R.V. Myers
Signature and Title of person preparing these answers

2/25/1975
Date

Please complete answers to this Questionnaire by October 1, 1974. Return it to: Lee A. Freeman, Jr.
If you have any inquiries write or call Alan Harris at that address.

Special Assistant Attorney General
One IBM Plaza
Suite 3350
Chicago, Illinois 60611
(312) 467-4560

CHICAGO PUBLIC SCHOOLS

Concrete Block Antitrust
QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

1. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these charts and utilize copies for further answers.)

4. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of Masonry Contractor	Total Cost of Project	Cost of Masonry Contract	Co Co Ma
1. [illegible]	9/21/67	12/18/68	[illegible]	445,257	———	———
2. [illegible]	12/20/67	11/20/71	[illegible]	1,041,051	———	———
3. ———	———	———	———	———	———	———
4. [illegible]	12/20/67	5/12/69	[illegible]	405415	———	———

5. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate | Date of Estimate | Amount of Estimate: Total Masonry Contract | Masonry Portion

1.	———	———	———
2.	———	———	———
3.	———	———	———
4.	———	———	———

6. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

C. Check whether Contract was: Competitively bid | Negotiated | Cost-plus | Other

X				
X				
X				

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Ledger Byers 6611 s Ione	8/28/68	2/10/71	Walter & Joslyn Co. 1620 w 87th st	712,184			
2.	E.T. Dirksen 6601 W Foster Ave.	2/17/71	4/11/73	Zisken Const. Co. 4424-34 Roosevelt Rd	560,807.10			
3.	A.F.Fiedler 4027 w wrightwood st	8/28/68	11/30/71	W. E Burger Co. 7500 S Ashland Ave	1,153,700			
4.	Wm. Wrenn 8546 s Green St	1/13/67	10/17/68	Walter & Joslyn Co. 1620 w 87th st	571,444			

	B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	V. Grisell 12610 S. Escanaba	12/26/68	1/15/71	Henry Bros. Co. 9112 S. Ashland Ave	466,800			
2.	L. H. Harper 6520 S Wood St	12/30/70	6/18/74	Int. Const. Co. Inc. 5528 W. Western Ave	1,076,685.27			
3.	C.G. Hamrend 2819 W 21st Pl	7/12/72	2/21/73	A.Jadnick & Co. 4535 N Wrightwood	275,400			
4.	J.F. Kennedy 6325 S 76th St	11/19/69	5/2/72	L.F. Fitzsimmons Co. 201 S State Rm 05	313,530			

	B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Concrete Block
1. 512 S Laverne Ave A. Mitchell	3/23/66	6/12/68	2634 W Peterson Ave Walter S Joslyn Co	374,998			
2. 2233 W Ohio St A.B.Mason	6/24/70	12/7/71	1620 W 69th St W.F. Fitzsimmons Co	174,038			
3. 1830 S Keeler Ave J.F. Koutsmedis	9/23/70	10/25/71	201 S State Rd 83 Roth, Strock & Asst.	210,979			
4. 4263 N Sheridan Rd	11/18/70	11/19/71	700 N Larch St	154,415			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Concrete Block
1. 115[illegible] S 54th St [illegible] Curry	3/8/72	10/22/73	[illegible] & Co. 4525 N Ravenswood	957,700			
2. 1037 S Morgan W.E.E. Daniels	2/23/72	5/24/74	Luby Const Co Inc 5.28 W Lawrence	812,142			
3. 320 - 133rd St L.H. Ayler	3/13/68	11/20/69	Walter S Joslyn Co 1620 W 69th St	504,268			
4. 8716 S Wallace St	11/8/67	3/3/69	Roth, Strock & Asst. 700 N Larch	487,821			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	C C B
1.	School, Metro [illegible] 6020 - Langley Ave	10/4/71	7/20/73	Allen Bennett Co 2639 - Peterson Ave	624,614.70			
2.	H. Spencer 214 - Lawrence Ave	7/12/67	12/5/68	Koch, Struck & Assoc 709 N. Lorch Ave	354,527			
3.	Geo. Hilton 4152 - West 21st Ave	6/22/66	11/4/70	Gibbons Const Co Inc 16407 Brunswick Rd	357,000			
4.	G. Washington 3611 - 111th St	3/22/72	4/2/73	Henry Bros Co. 9112 S Ashland Ave	1,284,337			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

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Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Conc Bloc
1.	School, Metro [illegible] Hazel & Wilson	11/14/73	In Progress	Leo Jehuda & Son Co 514 S 9th St	4,243,000			
2.	Curtis Mack 32 & 115th St	4/10/74	In Progress	Walter & Joslyn Co 1600 W 69th St	1,244,669			
3.	Mrs. 6121 S Normandie Ave	3/27/74	In Progress	Walter & Joslyn Co 1600 - 69th St	795,600			
4.	Abdul Muhaimin Nort. Weller & West Gate St	2/26/73	In Progress	Leo Jehuda & Son Co 514 W 55th St	3,999,756.71			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

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Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Concrete Block
1. [illegible]	11/[illegible]/73	In progress	700 [illegible]	693,[illegible]			
2. [illegible]	3/17/73	3/[illegible]/74	1600 [illegible]	378,914			
3. [illegible]	4/24/74	In progress	4545 [illegible]	1,253,[illegible]			
4. [illegible]	12/[illegible]/73	2/[illegible]/74	1600 [illegible]	1,010,[illegible]			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
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I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Concrete Block
1. [illegible]	10/[illegible]/73	10/17/73	[illegible]	1,0[illegible],871			
2. [illegible]	1/[illegible]/74	11/[illegible]/73	[illegible]	510,739			
3. [illegible]	9/25/73	In Progress	[illegible]	778,3[illegible]			
4. [illegible]	2/17/71	3/22/73	7[illegible]	613,564			

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
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I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	C. C. P.
1. Cen. Parlo [illegible]	2/17/71	[illegible]	[illegible]	$[illegible]3,340			—
2. 917 [illegible]	12/22/71	6/13/73	[illegible]	[illegible],49[illegible]15			—
3. 224 [illegible]	1/20/72	2/3/74	[illegible]	750,519			—
4. 241 [illegible]	9/8/71	11/[illegible]1/71	[illegible]	605,571			—

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	C. C. P.
1. 1065 [illegible]	5/8/71	2/1/71	[illegible]	1,055,000			—
2. 1241 [illegible]	12/27/72	11/3/73	[illegible]	1,[illegible]13,589			—
3. 8530 [illegible]	11/8/72	9/30/74	[illegible]	80,173			—
4. 3740 [illegible]	12/0/71	8/15/73	[illegible]	409,200			—

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
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I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	C: C: R.
1.	4237 [illegible]	10/27/71	2/[illegible]/72	[illegible]	$81,400			—
2.	4436 S Union	11/14/73	In progress	700 [illegible]	$71,125			—
3.	11[illegible] S [illegible]	12/22/71	4/24/73	4500 [illegible]	$95,200			—
4.	720 [illegible]	9/4/71	11/3/71	1600 [illegible]	$27,436			—

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Co Co R.
1.	517 S Parkside [illegible]	1/26/72	11/16/72	[illegible]	$53,680			—
2.	1041[illegible] S State St	9/8/72	1/3/73	[illegible]	$1,160,500			—
3.	4250 S [illegible]	4/11/73	4/29/74	6314 S 111th St	$94,550			—
4.	7433 S [illegible]	1/24/72	11/16/72	1620 [illegible]	$10,720			—

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Con: Blo:
1.	919 [illegible] Derry	11/24/71	2/21/73	[illegible] Const. Inc	1,259,000			
2.	[illegible]37 [illegible] Erie [illegible] Co.,Colo	2/8/72	1/3/73	7300 S Ashland Ave [illegible] & Duffy F & Co	1,160,500			
3.	6590 [illegible] Dudley [illegible]	2/17/71	3/28/73	7500 S Ashland [illegible] & Son Co	433,125			
4.	2148 [illegible] Lon[illegible] Ave	11/14/73	In Progress	914 E 59th St	1,439,000			

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
	X			
	X			
	X			
	X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

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I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Con. Blo:
1.	646 [illegible] Lawndale [illegible] Funeral	5/13/72	In progress	700 S Larch St [illegible] Const Inc	1,242,140			
2.	2230 [illegible] Nelson [illegible]	5/2[illegible]/72	1/24/73	[illegible] Lester Br [illegible] & Sons Ltd	651,426			
3.	6th [illegible] Ashland [illegible] & Bldg	10/27/71	5/31/73	700 S Larch St [illegible] & Son Co	1,430,588			
4.	1628 [illegible] Washington	12/2/71	10/[illegible]2/73	4525 S Havenswood [illegible] & Co	614,200			

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Concrete Block Antitrust

QUESTIONNAIRE

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Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost Concrete Block
1. Wall Washing Co 137 & 138th Pl	9/6/72	1/5/73	[illegible] & Co 7500 S Ashland Ave	$2,000			
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

E. If a contract was competitively bid, answer these further questions. (Circle successful bidder. If all bids were rejected briefly state why.)

	Name & Address of General Contractors who Bid on Project	Amount of General Contractor's Bid	Name & Address of Masonry Contractors	Amount of Masonry Contractor's Bid	Amount of Concrete Block	Date Bids Opened
1.						
2.						
3.						
4.						

IN[illegible] Direct Purchases of Concrete Block - January 1, 1966 - July 1, 1974.

Date of Purchase	Name of Seller	Dollar Amount of Purchase	Unit Purchase Price: Size of Block	Unit Purchase Price: Price per Block	Purchase Order Number	Seller's Invoice Number	Name of Purchasing Agent (if no longer in your empl: give last known address)

Name and address of governmental entity responding to this Questionnaire:

CHICAGO PUBLIC SCHOOLS

I certify that the answers contained herein are true and correct to the best of my information, knowledge and belief.

Signature, and Title of person preparing these answers

10/15/74
Date

Please complete answers to this Questionnaire by August 25, 1974. Return it to If you have any inquiries write or call Alan Harris at that address.

Lee A. Freeman
Special Assistant Attorney General
One IBM Plaza
Suite 3200
Chicago, Illinois 60611
(312) 467-6540

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Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Addns. & Alterations to Lake County Nursing Home, Rt. 1125 No. Milwaukee Ave. Libertyville, Ill.	5/18/70	Approx. June 1970 thru Nov. 1972	Jenkins & Boller Co., Inc. P.O. Box 1170 Waukegan, Ill. 60085	$4,836,450.	15 Same as general Contractor	$596,540.	$23,566.00
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. NONE				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
XX			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

LAKE COUNTY BOARD
COUNTY OF LAKE
18 No. County St.
Waukegan, Ill. 60085

2. Supervision of Construction

Robert Goudtner & Assoc., Architect
711 McKinley Rd.
Lake Forest, Ill. 60045

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Kane) Elgin State Hospital Child & Adolescent Service Center Elgin, Illinois - 71X-2115-12B			Will-Frede	693,106.	KM & Sons	107,795.	
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Bradley & Bradley, Inc. 924 North Main Rockford, Illinois 61103				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
N/A			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

236

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Kane) Rehab. of Service Center Activity Center-Elgin State Hos. 71X-2115-13B			Will-Frede, Inc. 134 S. Washington St. Naperville, IL 60540	842,112.	K. M. & Sons Inc.	98,500.	
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Lundstrum & Struble, Inc. 33 West Jackson Blvd. Chicago, IL 60604				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

237

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Will) Elizabeth Ludman Retarded Children's Center Park Forest, IL			Pathman Const. Co. 2207 Dodge Avenue P.O. Box 1660 Evanston, IL 60201	2,310,187.	Ringbloom Const.	332,673.	142,806.
2. 70X-2040 - IB							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. A. Epstein & Sons, Inc. 2011 West Pershing Chicago, IL 60609				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
N/A			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Kane) St. Charles Training School for Boys New Academic Building			Lee Const. Co. 6334 N. Calif. Ave. Chicago, IL 60645	713,435.	Celsel & McGuire, Inc.	146,182.	
2. St. Charles, IL CDB # 74661							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Barry & Kay Architects, Inc. 53 West Jackson Chicago, Illinois 60604				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
N/A			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:
Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Cook) Illinois National Guard Maintenance Center North Riverside, Illinois 71-3510-51B			General Building Maintenance Co., 3264 Milwaukee Ave., Chicago, IL	41,290.	General Building	6,840.	1,600.
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Robert F. Kill & Associates 111 West Washington Street Chicago, Illinois 60602				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

240

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:
Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Cook) Mental Retardation Facility Tinley Park, Illinois 72-2010-4B			Miller-Davis Co. 4300 North Avenue Melrose Park, ILL. 60164	4,703,000. (Not completed)	Ringbloom Const. Co.	245,000.	
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Perkins & Will Architects, Inc. 309 West Jackson Blvd. Chicago, Illinois 60606				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

241

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:
Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Cook) Children & Adolescent Center - Chicago-Reed M.H. Center - Chicago, Illinois			Lee Const. Co. 6334 N. Calif. Ave. Chicago, Illinois 60659	4,163,322.	Thorleif & Larsen & Son, Inc.	670,500.	
2. Contract #7 2112.12							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Jensen & Halstead, Ltd. 600 South Michigan Ave. Chicago, Illinois 60605				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:
Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (LaSalle) Ill. Youth Comm. Ill. Industrial School For Boys Sheridan, Illinois	12-19-66		William E. Burger Co. 7500 S. Ashland Ave. Chicago, Illinois	315,075.	William E. Burger Co.	32,960.	
2. Contract No. 74660							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Pyskacek & Rosenwinkel 55 E. Washington St. Chicago, Illinois				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Capital Development Board

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. (Will) Illinois Youth Comm. Dormitory Unit Building Joliet, Illinois Contract No. 74714	1-24-67	2/21/67 - 3/27/68	Colby Erikson, Inc. 924 South Water St. Wilmington, Illinois 60481	301,116.	Colby Erikson, Inc.	22,943.	4,800.
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Vitzthum & Kill One North LaSalle Street Chicago, Illinois 60602				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D.

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
5 1. Ill 2-57, 49th & Langley 11-story Elderly	6/21/66	12/12/66-6/1/68	S. N. Nielsen Co. 3059 W. Augusta Blvd.	1816111.30	Ruby Const. 5528-32 N. Western	101,455	
6 2. Ill 2-58, Clark & Irving 21-story Elderly	6/6/66	6/24/66-3/15/68	Paschen Contractors 2739 N. Elston Ave.	1838249.85	Frank Miller's 1801 N. Halsted	152,900	
7 3. Ill 2-59, Hyde Park-Kenwood 1 & 2 story Kld. & Fan.	3/29/66	5/2/66-12/27/66	Nathan Linn & Sons 823 E. 79th St.	464755.27	Lowery Const. 11435 S. Bell	53,821	
8 4. Ill 2-61, Lincoln & Sheffield 11-story Elderly	12/16/66	1/30/67-7/22/68	Paschen Contractors 2739 N. Elston Ave.	1934516.76	Frank Miller's 1801 N. Halsted	121,000	

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

245

Concrete Block Antitrust

QUESTIONNAIRE — Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
1.	Ill 2-66, Clark & Irving 2 9-story Elderly	6/28/68	8/12/68-4/6/70	Mayfair Const. 3660 N. Jersey	252606.24	Frank Miller's 1801 N. Halsted	211,500	
2.	Ill 2-67, Chestnut & Noble 9-story Elderly	6/28/68	8/5/68-11/24/69	B. R. Abbott Const. 5789 N. Lincoln Ave.	1979961.51	Frank Miller's 1801 N. Halsted	174,125	
3.	Ill 2-69, 75th & Eggleston 3-story Family (Turnkey)	12/29/67		Southtown Planning, Developer 6401-A S. Lowe Ave.	107712.00			
4.	Ill 2-70, 43rd & Evans 9-story Elderly	6/28/68	8/26/68-1/28/70	S. N. Nielsen Co. 3059 W. Augusta Blvd.	2237533.88	Frank Miller's 1801 N. Halsted	153,750	

B.

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	x			
2.	x			
3.	x			
4.	x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

246

Concrete Block Antitrust

QUESTIONNAIRE — Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
1.	Ill 2-27, 12th & Washtenaw 1 9-story & 3 3-story Family	6/21/68	8/26/68-2/2/70	S. N. Nielsen Co. 3059 W. Augusta Blvd.	7029702.20	Frank Miller's 1801 N. Halsted	211,819	
2.	Adams & Wood 1 7-story & 2 3-story Family		8/18/68-11/3/69				370,550	
3.	42nd & Drexel 1 9-story & 3 3-story Family		8/26/68-4/1/70				285,650	
4.	Ill 2-50, Dickens & Burling 5-story Elderly	11/3/67	2/5/68-5/29/69	S. N. Nielsen Co. 3059 W. Augusta Blvd.	1593971.68	Frank Miller's 1801 N. Halsted	96,350	

B.

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	x			
2.	x			
3.	x			
4.	x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

247

Concrete Block Antitrust

QUESTIONNAIRE

Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
71.	Ill 2-32:I, 43rd & Princeton 1 14-story Elderly	9/27/68	11/14/68-9/21/70	B. R. Abbott Const. 5789 N. Lincoln Ave.	3171871.72	Prikler Masonry 4226 S. Elmwood Berwyn, Ill.	270,630	
72.	2-32:II, 42nd & Princeton 2-story Duplex & Townehouses	9/27/68	10/21/68-9/17/69	A:M Sunrise Const. Co. 12000 S. Marshfield	1638148.75	Hilltop Masonry 10420 S. Kedzie Blvd Chicago Ridge, Ill.	152,325	
73.	Ill 2-33, 31st & Wentworth 2 8-story Elderly	11/1/68	1/20/69-1/8/70	Paschen Contractors 2739 N. Elston Ave.	9727057.89	Prikler Masonry 4226 S. Elmwood Berwyn, Ill.	736,148	
74.	Cottage & Pershing 3 10-story & 7 3-story Family		1/27/69-5/14/70			Thorlief Larsen 850 Lee St. Elk Grove Village	291,400	

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
x			
x			
x			
x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

Chicago Housing Authority

QUESTIONNAIRE

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I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
71.	Ill 2-51, Clark & Webster 1 8-story Elderly	6/28/68	10/21/68-12/14/69	B. R. Abbott Const. 5789 N. Lincoln Ave.	1581751.51	Frank Miller's 1801 N. Halsted	154,230	
72.	Sedgwick & Wisconsin 1 3-story Family							
73.	Hudson & Sedgwick 1 3-story Family							
74.	Ill 2-64, Lawndale Scattered 18 3-story Family	3/24/69	5/27/68-11/25/69	Arjeak Company 9612 S. Halsted	2820524.63	Presbitero & Sons 3000 W. 119th	129,600	

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was: Competitively bid	Negotiated	Cost-plus	Other
x			
x			
x			
x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE — Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
1.	Ill 2-72, Lincoln & Sheffield 11-story Elderly	6/21/68	7/29/68-4/30/70	Joseph J. Duffy Co. 4994 N. Elston Ave.	2147054.28	Frank Miller's 1801 N. Halsted	149,713	
2.	Ill 2-73, Sheridan & Devon 25-story Elderly (Turnkey)	10/2/68	1/6/69-8/10/70	McHugh-Levin, Developer 29 E. Van Buren St.	6201004.54	A. B. Fireproofing 300 W. Washington	238,607	
3.	Ill 2-74:I, Douglas & Albany 2 3-story Family	8/29/68	12/16/68-3/9/70	A. L. Salsman & Sons 3524 W. Peterson Ave.	763678.49	Tabloff Const. 6601 N. Ramona, Lincolnwood, Ill.	14,750	
4.	2-74:II, Douglas & Independence 1 3-story Family	4/22/71	6/14/71-12/23/71	Nathan Linn & Sons 823 E. 75th St.	589652.71	Betts Masonry 4201 W. Monroe	16,000	

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
x			
x			
x			
x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE — Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
1.	Ill 2-68, Damen & Schiller 13-story Elderly	11/19/68	2/10/69-3/4/70	B. W. Handler Const. 120 W. Madison St.	1398791.98	Frank Miller's 1801 N. Halsted	112,550	
2.	Ill 2-60, 64th & Yale 14-story Elderly (Turnkey)	10/30/69	12/22/69-10/29/70	Fred Henderson & Assocs., Develpr. 6425 S. Iowa Ave.	2872746.50	Crossley Const. 1421 W. 111th	229,600	
3.	Ill 2-28, Scattered Sites 9 1-story & 2 2-story Family	11/7/72	12/11/72-4/2/74	Ruby Construction Co., Inc. 5528-32 N. Western	982191.00	Ruby Const. 5528-32 N. Wester	275,250	
4.	Ill 2-63, 33rd & Prairie 9-story Elderly	6/3/71	6/28/71-2/5/73	Joseph J. Duffy Company 4994 N. Elston Ave.	2970079.43	Jos. J. Duffy 4994 N. Elston	257,550	

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
x			
x			
x			
x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Chicago Housing Authority

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Total Cost of Masonry Contract	Cost of Concrete Block
1.	Ill 2-83, 16th & Racine 9-story Elderly	2/5/73	2/26/73-8/2/74	Walsh Bros., Inc. 3710 S. Western Ave.	2928000.00	[illegible] Masonry 6200 College Dr. Palos Heights	211,979	
2.	Ill 2-80, 91st & So. Chicago 2 9-story Elderly	8/17/73	10/29/73-6/20/74	Walsh Bros., Inc. 3710 S. Western Ave.	4325493.00	LS&S Const. 3712 N. Montrose	345,000	
3.	Ill 2-78, 21st & Albany 17-story Elderly	10/1/73	10/22/73-4/14/75	Paschen Contractors 2739 N. Elston Ave.	4816000.00	Zielke Masonry 4841 S. Linden	268,175	
4.	Ill 2-82, Division & La Salle 13-story Elderly	11/19/73	1/28/74-7/21/75	E. W. Corrigan Const. 915 Harger Road Oak Brook, Ill.	3918000.00	Frank Miller's 6430 Gross Pt. Rd. Skokie, Ill.	430,000	

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	x			
2.	x			
3.	x			
4.	x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

William E. Brekke
Purchasing Agent

1966 to present

2. Supervision of Construction

Peter Milovich
Deputy Director of Engineering

1966 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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II. Direct Purchases of Concrete Block - January 1, 1966 - July 1, 1974. Chicago Housing Authority

Date of Purchase	Name of Seller	Dollar Amount of Purchase	Unit Purchase Price: Size of Block	Unit Purchase Price: Price per Block	Purchase Order Number	Seller's Invoice Number	Name of Purchasing Agent (if no longer in your employ give last known address)
	NO INFORMATION AVAILABLE						

Name and address of governmental entity responding to this Questionnaire:

CHICAGO HOUSING AUTHORITY
22 W. MADISON ST.
CHICAGO, ILL. 60602

I certify that the answers contained herein are true and correct to the best of my information, knowledge and belief.

[signature] DIRECTOR OF ENGINEERING

Signature and Title of person preparing these answers

8-29-74
Date

Please complete answers to this Questionnaire by August 25, 1974. Return it to Lee A. Freeman If you have any inquiries write or call Alan Harris at that address.

Lee A. Freeman
Special Assistant Attorney General
One IBM Plaza
Suite 3200
Chicago, Illinois 60611
(312) 467-6540

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Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Antioch C.C. School District #34

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Antioch Upper Grade School 800 Highview Drive Antioch, Illinois 60002	11/3/69	2/1/71	Scherrer Const. Co. P. O. Box [illegible] Burlington, Wisc. 53105	$1,675,00.	Scherrer Const. Co.	$105,120.	$24,400.
2.							
3. Projfect #6857							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Scherrer Const. Co.	11/3/69	$1,675,000.	$105,120.	$24,400.
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
	X	None	

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education
Antioch C. C. School District #34

2. Supervision of Construction

Orput-Orput and Associates, Inc.
4153 Main Street
Skokie, Illinois 60076

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Arlington Heights School District 214

Concrete Block Antitrust

QUESTIONNAIRE

District Arlington Heights High School 214
Mount Prospect, Ill

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	(General) (Contractor) Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
John Hersey High School 1. Arlington Heights, Illinois	1/10/67	1/67-12/68	Eugene Hoffman Const. Co. P.O. Box 736, Mundelein, Ill.	3,251,454	Reb Construction Co. 8248 W. Higgins Chicago, Ill.	311,000	-
Rolling Meadows High School 2. Rolling Meadows, Illinois	4/9/70	4/70-9/71	Will-Frank Inc. Wheeling, Ill.	4,100,000	Fin Gerst Masonry Franklin Park, Ill.	413,420	
Buffalo Grove High School 3. Buffalo Grove, Illinois	5/1/72	5/72-9/73	Miller-Davis Co. Palatine, Ill.	3,330,000	Granberg Const. Co. Chicago, Ill.	702,183	
4.							

* Work Changed To Millard, Inc.

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. NONE				
2. NONE				
3. NONE				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
✓			
✓			
✓			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education

2. Supervision of Construction

Supervision by Architect.

1966-68 Berger, Kelley, Untead, Skaggs & Associates
1970-74 Orput-Orput & Associates

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Case School District 63

Concrete Block Antitrust

QUESTIONNAIRE

Case School Dist #63
17W641 Concord Pl
Darien, Ill 60559

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Case School Addition	10-15-69	Oct 69-Sep 70	Tatoole & Schroll 4700 Calumet Sag Rd Crestwood, Ill.	$283,595	Pignato Masonry, Oak Lawn, Ill.	$43,500	$3,000
2. Concord School	4-26-73	Apr 72-Sep 73	Walson Construction 197 E. Irving Park Rd Wood Dale, Ill.	613,306	Koraluk Construction 2226 Highland Berwyn, Ill.	69,750	10,110
3.							
4.							

B. If an Estimate of Costs was Prepared:

Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. No estimate made				
2. No estimate made				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education
   Case School District 63
   17W641 Concord Place
   Darien, Illinois 60559

2. Supervision of Construction
   Michael J. Donohue, Superintendent

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Indian Prairie
Dist. 204
Eola, Ill 60519

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Longwood School	Feb.27,67	3/27/67-6/21/68	Fred Ocklunder-Wheaton 264377 St.Charles	206,444	Korolok Cons.	38,212.00	9873.12
2. Longwood School	May 19,70	7/1/70-8/5/71	Waleton Construction 197 Irving Park,Wdle	203,843	Korolok Cons.	36,140.00	2512.16
3. Wheatland School	Jan.6,67	1/6/67-9/1/67	LaVerne Weber 516 Lake, Aurora	153,902	Lav. Dodd Oswego, Ill.	32,920.00	862.40
4. Wheatland School	June18,70	6/18/70-12/1/70	LaVerne Weber 516 Lake, Aurora	63,054	Zebra Masonry Aurora, Ill.	12,403.00	2109.86

B. If an Estimate of Costs was Prepared:

Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   A. Gordon Gregory
   B. Gordon Gregory
   C. James Clow
   D. Robert Clow

2. Supervision of Construction
   A. Balluff & Balluff
   B. Balluff & Balluff
   C. Robert Hall Associates
   D. Robert Hall Associates

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Indian Prairie School District 204

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Wheatland School	6/13/73	6/13/72-12/7/73	Pancali Bros. Inc. 705 S.Edgelawn,Aurora	110,700	Midwest Tile 167 Evanslwn.	23,440	1742.62
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   E. Robert Clow

2. Supervision of Construction
   E. Robert Hall Associates

Give the dates when he exercised such responsibility. If no longer

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Concrete Block Antitrust

QUESTIONNAIRE

Custer Park Grade Sch. Dist. # 44C
Custer Park, Ill. 60418

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Library & Kindergarten addition	27 Apr.'70	90 days	O.L. Martin, Kankakee	$46,566	Smicker Masonary Cabery, Il.	$10242	$1312.92
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Bo
   Board of Education
   Custer Park Grade School
   Frank Jirousek, President
   Custer Park, Il. 60418

2. Supervision of Construction

   Mr. George Cinder, Sup't., Custer Park School
   Hickory Hills, Il.

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Darien Public Schools #61

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Addition to Eisenhower Jr. High #6460	10/15/72	11/24/72 - 7/18/73	Uti-Frede, Inc. 136 So. Washington Naperville, Ill.	750,050	K-M & Sons W.Chicago, Ill.	94,250	37,700
2.							
3. Marion Hills School Addition #6647	8/1/67	9/67 8/68	Newgren Construction 162 W.144th Riverdale, Ill.	221,844	Kensington	27,875	11,150
4. Marion Hills School- Kitchen	10/72	11/72 5/73	D.C.DiNaso Oak Lawn, Ill.	20,406	Ready Masonry Co. Chicago, Ill.	6,800	2,720

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Fields, Goldman, Magee 1100 Jorie Blvd. Oak Brook, Ill	10/15/72	750,050.	94,250.	37,700.
2. Same as #1	8/1/67	221,844.	27,875.	11,150.
3. Same as #1	10/72	19,500.	6,800	2,720
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
x			
x			
x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education
2. Supervision of Construction
   Dr. Mark DeLay, Superintendent

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

District 149
Darien, Ill 60419
15141 Dorchester Ave.

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building*	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concret Block
1. Diekman School Addition 15141 Dorchester, Dolton Ill.	8/2/67	67-69	D.J. Degenhart Con. 15216 Main St. Harvey, Ill.	214,201	Fabri Cons. 14745 Minerva Dolton, Ill.	13,080	N/A
2. Sandridge School 600 Oglesby Cal.City	9/24/69	69-70	Stephan Const. Co. 14941 Edbrooke, Dolton, Ill.	511,407	Sarros Const.	66,465	N/A
3. Dirksen Jr. High 154th & Michigan City Rd	7/10/69	69-70	G.O. Nelson & Sons 12100 S. Marshfield	519,213	G.O. Nelson	80,479	N/A
4. Calumet City, Ill.			Calumet Park, Ill.				

*All Structures Brick

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. N/A	N/A	N/A	N/A	N/A
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Diekman '67 Albert Tilandis
   Address unknown
   Albert Harlow
   Address unknown
   Sandridge James Albert
   Dirksen James Albert
2. Supervision of Construction
   Same

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Dolton School District 149

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Diekman School addition 15121 Dorchester, Dolton, Ill.	1967	1/73-3/74	Klien Cons. Co. Berwyn, Ill.	534,972	Ready Bros.	65,000	N/A
2.	Vandenberg School Addit. 14833 Avalon, Dolton, Il.	3/1/71	3/71-8/72	Henry Bros. Co. 3112 S. Ashland Chicago, Il., 60620	346,002	Henry Bros.	48,176	21,600
3.								
4.								

* All Structures Brick

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.	N/A	N/A	N/A	N/A	N/A
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	X			
2.	X			
3.	X			
4.	X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

   Diekman '74 James Albert
   1325 Sibley Blvd.
   Dolton, Ill.

   Vandenberg "

2. Supervision of Construction

   Same

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Elmhurst Comm Sch. District 3
Dupage County
155 Victory Parkway
Elmhurst

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	addition to Churchville Jr. High - Elmhurst, IL	7/14/72	1972-73	Solberg & Sullivan 3611 Oakton Skokie, IL	585,857	Koraluk 2226 Highland Berwyn, IL	72,900	9506
2.	Churchville Jr. High Elmhurst - IL	6/10/68	1968-70	Alan Const. Co. 838 Skokie Blvd. Northbrook, IL	1,417,072	Engmark Masonry 1213 S. Wash. Park Ridge, IL	197,225	21,000

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	X			
2.	X			
3.				
4.				

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

   1. Board of Education

   2. Board of Education

2. Supervision of Construction

   1972-73 - 1. Earl L. Sutter, 151 Mont Clare, Wood Dale, IL,
   1972-73 - Richard J. Basten, 5631 Westview Ln., Lisle, IL,
   1973 - Roland M. Smith, 1026 E. Harrison, Wheaton, IL,
   1973 - Gordon E. Schulz, 872 Cambridge, Crystal Lake, I

   2. Arthur J. Adelberg, 127 Linden, Elmhurst, IL

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding: Downers Grove Public Schools

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	North and South Natatorium Additions	6-20-73	6-20-73 to 12-31-74	Kiendl Const. 6856 North Ave.	2,150,000	Kiendl Cons. same	260,000	20,856.
2.	Fairmount School Addit. 6036 Blodgett	11-6-72	11-6-72 to 8-1-73	A. Kopecky & Sons 432 Ogden Ave.	154,328.	R. J. Rakogi 15W181 53rd	20,000.	950.
3.								
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.	No				
2.	No				
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	X			
2.	X			
3.				
4.				

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

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Concrete Block Antitrust

Fairmont School District 89 QUESTIONNAIRE

Fairmont School Dist #89 Lockport Ill.

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	FAIRMONT JUNIOR HIGH SCHOOL, LOCKPORT, IL. 60441	3-21-73	4/73-8/73	MAZZUCCO CONSTRUCTION 1815 PLAINFIELD RD. JOLIET, IL. 60435	$660,200.	MAZZUCCO CONST.CO.	$92,300.	$16,493.
2.								
3.								
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	X			
2.				
3.				
4.				

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

BOARD OF EDUCATION
FAIRMONT DISTRICT 89
HOBBS AND GREEN GARDEN PL.
LOCKPORT, ILLINOIS 60441

2. Supervision of Construction

TELOS GOLDMAN MAGEE
1100 JORIE BOULEVARD
OAK BROOK, ILLINOIS 60521

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

265

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:

Franklin Park Public Schools, District 84

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Hester Jr. High, Phase I	5-28-69	6-69 to 6-70	Roth, Strock & Assoc. 700 A. Larch Street Elmhurst, Ill.	$ 38,644.	Not Available	$16,000	-
2. Hester Jr. High, Phase II	6-1-70	6-70 to 9-71	Glen Construction Co. 936 Skokie Blvd. Northbrook, Ill.	$476,756.30	Pilgrim Const.	$80,411.	-
3. West School	5-28-69	6-69 to 8-70	Roth, Strock	$632,446.22	Master Mason	$145,495.38	-
4. East School	5-28-69	6-69 to 7-70	Roth, Strock	$115,167.25	Not Available	$23,000	-

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Superintendent Vance Hester

2. Supervision of Construction

Superintendent Vance Hester

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

266

Concrete Block Antitrust

District #89
Glen Ellyn Ill

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. 250 S. Park Blvd., Glen Ellyn Masonry-Cement Block Park View School-K-5	July-1965	7/65--10/67	Reagor & Olson 6050 N. Keystone Chicago, Ill.	$226,587.00	Dymond & Anderson 640 E. NW Hwy. Mt. Prospect	$42,746.00	-
2. 2 So. 125 Mayfield Lane Masonry-Cement Block Westfield School - K-5	April 1967	6/67--1968	Harvey P. Michelsen 900 Woodland Drive Glen Ellyn, Ill.	$47,596.06	Robt. W. Butendorf 9 Woodridge Dr., Oakbrook	62,640.00	-

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts:

Board of Education
School District No. 89
250 So. Park Blvd.
Glen Ellyn, Ill.

2. Supervision of Construction

Daniel B. Rodgers,
Assistant Superintendent-Business

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

267

Concrete Block Antitrust

QUESTIONNAIRE

Glen Ellyn School District 89

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
3. 1800 Briarcliffe Blvd., Glen Ellyn Masonry-Cement Block After Glen School - K-5	Mar.1970	3/70 - 7/72	Fred Ockerlund,Jr. 26 W 377 St. Charles Wheaton, Ill.	$1,075,315.17	Koroluk Constr. Co. (can't locate)	$135,000.00	
4. 735 Sheahan Ave., Glen Ellyn Masonry-Cement Block Glen Crest Jr. High 6-8	June 1969	6/69 - 11/70	Alan Construction Co. 836 Skokie Blvd. Northbrook, Ill.	$922,874.79	Vil-Mar Mason Contractor 23 W 458 North Wheaton,	$62,640.00	

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education
School District No. 89
250 So. Park Blvd.
Glen Ellyn, Ill.

2. Supervision of Construction

Daniel B. Rodgers
Assistant Superintendent-Business

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

Name of governmental entity responding:
School District # 41
Glen Ellyn, Illinois

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Administration Center 793 N. Main St. Glen Ellyn, Ill. 60137	12/21/70	12/70 to 10/71	Egyptian Constr. Co. 12121 W. Higgins DesPlaines, Ill. 60016	$369,123	Caesar Fiochi Co. 2490 Skokie Valley Highland Park, Ill.	$52,500	$19,000
2. Project No. 7004							
3.							
4.							

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education

2. Supervision of Construction

Orput-Orput & Associates, Inc. (Architect)
4153 Main St.
Skokie, Illinois

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Concrete Block Antitrust

QUESTIONNAIRE

School District # 41
Glen Ellyn, Illinois

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Glen Ellyn Junior High School 240 Hawthorne St. Glen Ellyn, Ill. 60137	10/1969	2/70 to 10/71	Henry Brothers 9112 S. Ashland Ave. Chicago, Ill.	$1,240,285	Henry Bros. 9112 S. Ashland Chicago, Ill.	$116,416.62	$39,635
2.	~~Project No. 6852~~							
3.								
4.								

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education

2. Supervision of Construction
   Orput-Orput & Associates, Inc. (Architect)
   4153 Main St.
   Skokie, Ill.

Give the dates when he supervised such responsibilities. If no longer in your employ give last known address.

BEST COPY AVAILABLE

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding:
School District #41
Glen Ellyn, Illinois

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Churchill School - Project 6854 Glen Ellyn, Ill. 60137	9/16/69	1969 - 1971	Fred L. Ockerlund, Jr. & Assoc. Wheaton, Illinois	$504,064	Western Mason Contractors Inc. Wheaton, Ill.	$59,500	$20,000
2.								
3.	Forest Glen School - Project 6851 Glen Ellyn, Illinois	9/16/69	1969 - 1971	"	$283,253	Esche & Lee, Inc. Des Plaines, Ill.	$26,900	$7,000
4.								

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education

2. Supervision of Construction
   Orput-Orput & Associates, Inc. (Architect)
   4153 Main St.
   Skokie, Ill.

Give the dates when he supervised such responsibilities. If no longer in your employ give last known address

Concrete Block Antitrust

QUESTIONNAIRE

School District # 41
Glen Ellyn, Illinois

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Hawthorne School - Project 6853 Glen Ellyn, Illinois	9/16/69	1969 - 1971	Fred L. Ockerlund & Assoc., Wheaton, Illinois	$435,175	Esche & Lee, Inc. Des Plaines Ill.	$53,100	$14,000
2.							
3.							
4.							

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education

2. Supervision of Construction

Orput-Orput & Associates, Inc.
4153 Main St.
Skokie, Illinois

272

Concrete Block Antitrust

Graysiake School District 127 QUESTIONNAIRE

Graysiake Community E.
Graysiake, Ill. 60
400 N. LAKE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A.

Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Graysiake Middle School	1/1973	2/1973-8/1974	Jenkins & Hill	$2,---,---	Jenkins & Gillis	$5,100	$17,584
2.							
3.							
4.							

B.

If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education

2. Supervision of Construction

L H Rose
2/1973 - 8/1974

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

273

Harvey School District 147

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Kich School Addition 155th Place Hoyne, Harvey	2/7/66	3/66-2/67	D.J.Degenhart Co. Harvey, Illinois	286,669.	Kensington Dolton, Ill.	40,300	-
2.	King Jr. High 146th & Sealey, Dixmoor	10/65	10/66-9/67	Stephan Constr. Blue Island, Ill.	578,718.	Mat.Serv. Thornton, Ill	8,735	
3.	Washington School			D. J. Degenhart		Illinois Brick Co.		12,516.
4.	153rd & Lincoln, Harvey	10-65	10/65-10/66	Harvey, Illinois	133,200.	D.J.Degenhart Harvey	16,102	

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.	-	-	-	-	-
2.	-				
3.					
4.	-				

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	x			
2.	x			
3.				
4.	x			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education awarded the General Contract and the General Contractor awarded the sub-contractors

2. Supervision of Construction
   The School Supt. & Architect, M. K. Young & Associates, 221 No. LaSalle St Chicago, Illinois

1963-1972

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

274

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Walker School Clarendon 120 S. Walker Hills, Ill.	6/5/67	June '67 to Sept. '68	Vertovec Construction Co.	$252,942.95	Midwest Conc. Products	$2,683.00	$0,415.00
2.	950 S. Oak St. Hinsdale, Oak School Illinois	11/14/66	Nov. '66 to Sept. '67	Coath & Goss, Incorporated	$175,116.49	Information not available-------		
3.								
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.	Information not available				
2.	" " "				
3.					
4.					

C. Check whether Contract was:

	Competitively bid	Negotiated	Cost-plus	Other
1.	X			
2.	X			
3.				
4.				

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

275

Lake Forest High Schools

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of Masonry Contractor	Total Cost of Project	Cost of Masonry Contract	Cost of Concrete Block
1.	West Campus Phase I	1-9-70	March 1970 to Sept. 1971	Jenkins & Boller Inc. Waukegan, Ill.			
2.	West Campus Phase II						
3.							
4.							

	B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Brook J. Chatten
2. Supervision of Construction
   John C. Brennan - Robert M. Mitchell

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

APPLICATION FOR PAYMENT AND SWORN STATEMENT FOR CONTRACTOR AND SUBC

Project Title: Lake Forest High School - West Campus - Phase I
Lake Forest, Illinois
Payment Application # 26
Arch./Engr. Metz, Train, Olson and Youngren
Period from
Contractor Jenkins and Boller Co., Inc.
Change orders include #

1 CONTRACTOR WORK/MATERIAL CONTRACTED FOR	2 ADJUSTED TOTAL CONTRACT Including change orders	3 WORK COMPLETED & MATERIALS STORED %	3 DOLLAR VALUE	4 TOTAL RETAINED Including this application	5 PREVIOUSLY PAID
Jenkins and Boller Co.,Inc. General Conditions	63,010.00		63,010.00	-	63,010.00
Jenkins and Boller Co.,Inc. Surety Bond	20,033.00		20,033.00	-	20,033.00
Lake County Grading Building Excavating	38,800.00		38,800.00	-	38,800.00
Addurface Paving Bituminous Paving	64,666.80		64,666.80	-	63,466.80
K A C Construction Site Grading	50,942.30		50,942.30	-	50,942.30
Jenkins and Boller Co.,Inc. Forms Concrete	55,717.00		55,717.00	-	55,717.00
Enterprise Ready Mix Concrete Material	133,182.00		133,182.00	-	133,182.00
Adjustable Forms, Inc. Centering Shroud	70,000.00		70,000.00	-	70,000.00
Bergen Build, Inc. Fiberglass Dome	50,000.00		50,000.00	-	50,000.00
Rockford Fabricating & Supply Reinforcing Steel	99,518.00		99,518.00	-	99,518.00
Walden Steel Erec. Reinforc.Steel Erec.	60,343.00		60,343.00	-	60,343.00
Consumers Steel & Supply Wire Mesh	3,665.00		3,665.00	-	3,665.00
Xenco Waterproofing Premolded V Bar.	11,700.00		11,700.00	-	11,700.00
Glenrock Co. Perimeter Insul.	446.00		446.00	-	446.00
Jenkins and Boller Co.,Inc. Abrasive Sandblasting	3,000.00		3,000.00	-	3,000.00
Illinois Brick Co. Concrete Block	74,079.00		74,079.00	-	74,079.00
Tile Craft Corp. Face Brick	36,000.00		36,000.00	-	36,000.00
Acme Brick & Supply Co. Masonry Material	37,089.00		37,089.00	-	37,089.00
Jenkins and Boller Co.,Inc. Point. and Cleaning	2,500.00		2,500.00	-	2,500.00
Sternal Struc.Steel Struc.Steel	80,300.00		80,300.00	-	80,300.00
Roman Building Products Metal Deck	7,700.00		7,700.00	-	7,700.00
Fidelity Ornamental Miscellaneous Metals	51,134.00		51,134.00	-	51,134.00
C M I Bldg. Spec. Metal Exp. Joints	1,200.00		1,200.00	-	1,200.00
A. C. Nelson Co. Insulation Material	3,500.00		2,500.00	350.00	3,150.00
Superior Fire & Iron Products					

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Concrete Block Antitrust

QUESTIONNAIRE

Antitrust #67
Lake Forest, Ill. 60045
95 W DEERPATH

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Deer Path Junior High School 155 W. Deerpath	8/21/67	9/5/67 to 12/68	Kiendl Construction Company 6856 W. North Ave. Chicago, Il. 60635	$2,425,180	Kiendl Construction Co. 6856 W. North Ave. Chicago, Il. 60635	$334,000	
2.	Lake Forest, Il. and Additions and Alterations							
3.	to Deer Path Intermediate School 95 W. Deerpath							
4.	Lake Forest, Il.							

B.

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

278

Concrete Block Antitrust

QUESTIONNAIRE

Antitrust #
Lake Villa, Ill.
PO Box 156

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.								
2.								
3.								
4.								

B.

	If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts

2. Supervision of Construction

1725 Plaza Rd.
Aurora, Ill

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

279

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Leland, Illinois Addition to High School	9/21/66	1966-69	Contemporary Builders, Inc. 774 Roosevelt Rd, Glen Ellyn, Il 60137	365,699.01	none	unavailable	$200.00
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
Board of Education

2. Supervision of Construction
Arthur W. Lundahl from Gilbert A. Johnson, Fitz Hechausen and Associates, Inc.

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

280

Roselle School District 11

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Medinah Middle School 700 E. Granville, Roselle, IL.		1/73 - 10/73	Construction Mgr. Don.E. Carlson 1100 -22nd St. Oakbrook, IL.		J.&E.Duff 433 E.St.Chas Rd. Wheaton, IL.	$161,115	$21,100 fro Ill.Brick
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. DNA				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
XXX			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
President & Secretary
Board of Education
School District No. 11
700 E. Granville
Roselle, IL. 60172
312-893-3737

2. Supervision of Construction
Donald R. Carlson & Robert Meder
Donald R. Carlson & Associates
1100 - 22nd Street
Oakbrook, IL. 60521
312-887-0540
In employ September 1972 - November 1973

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

281

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding: Mokena Public Schools Dist 159 MOKENA IL, 60448

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Willowcrest Primary School District 159, Mokena, Ill.	11-6-68		Robert G. Hogan Co. Joliet, Ill.	206,792.00	Robert G. Hogan Joliet, Ill.	43,444	Not Avail.
2.	Addition to Willowcrest School District 159, Mokena, Ill.	5-23-73		Fryklund Const.Co. Homewood, Ill.	89,102.06	Illinois Masonry South Holland Ill.	19,327	1,824.71
3.	Addition to Willowcrest Primary School District 159, Mokena, Ill.	6-17-74		Newgren Const.Co. South Holland, Ill.	452,527.47	Conger Masonry Tinley Park Ill.	101,260	Not Avail.
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
XX			
XX			
XX			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education
Mokena Public Schools District 159
Mokena, Illinois 60448

2. Supervision of Construction

James R. Ennis 7-1-62 / 6-30-73
presently R.O.V.A. School District

Kenneth F. Bochmann
9/1/63 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

282

Concrete Block Antitrust

QUESTIONNAIRE

Name of government entity responding: Mundelein Elementary School District No.75

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Mechanics Grove School	1969	1969-1970	Amos Bros. Inc.	596,968.41	Kordas Carlson &	68,207	
2.								
3.								
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Dr. Norman Brust and

School Board

2. Supervision of Construction

Dr. Norman Brust

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

283

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Yeager Elementary School Morrow Ave.—North Chicago	10-3-66	10-3-66 to 9-1-67	Jenkins & Boller 345 Berry—Waukegan, Ill.	435,625	O.E.Thompson	98,000	25,900
2.	A.J. Katzenmeier Elem. School Kennedy & Argonne Dr.—N.Chicago	4-26-71	4-26-71 to 6-1-72	Jenkins & Boller 345 Berry—Waukegan, Ill.	937,533	Carlson & Kordas	145,500	
3.	Maintenance Garage Morrow Ave.—North Chicago	5-24-72	6-1-72 to 10-30-72	Pickus Const. Co. Waukegan, Ill.	87,455	Pickus	9,000	
4.								

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   (1) Donald H. Scherwat, Business Manager
   (2) Donald H. Scherwat, Business Manager
   (3) Donald H. Scherwat, Business Manager

2. Supervision of Construction
   (1) Nicol & Nicol, Architects
   (2) Joseph Legat, Architects
   (3) Joseph Legat, Architects

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

284

Concrete Block Antitrust

Name of government entity responding:
(NORTH PALOS) ELEMENTARY SCHOOLS DISTRICT 117
Cook County

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description

	Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Quin School Addition 7840 W. 103rd, Palos Hills	2/70	app. 6 mos.	R.O. Anderson 4700 Cal Sag Rd, Midlothian		Davis & Mehda 12033 70th Ct.	31,778.00	11,916.75
2.	Conrady Jr. High Addition 97th & Roberts Rd, Hickory Hls	as above	as above	as above		as above	47,855.00	17,945.63
3.	Dorn School Addition 7825 W. 92nd, Hckry Hls	5/71	app. 5 mos.	as above		as above	45,000.00	16,875.00
4.	Glen Oaks, School Addition Conrady Jr. High Addition Quin School Quin Primary Center	4/71 4/71	unfinished unfinished	as above as above		as above Medema, Inc. 11921 S. 80th	34,390.00 66,700.00 35,000.00	no figures until completion of work

B. If an Estimate of Costs was Prepared:

	Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.					
2.					
3.					
4.					

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   North Palos Elementary Schools District 117
   Board of Education, 70-71 - Philip Viso, President
   74 - Mrs. Joan Kirk, President

2. Supervision of Construction
   Our architect - Healy, Moore Associates
   4 E. Clinton Street
   Joliet, Ill.
   Mr. Paul Sandburg
   their representative

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

285

Concrete Block Antitrust

QUESTIONNAIRE

North Palos School District 117

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Glen Oaks Addition S. 90th & S. 88th Av., Mokry Hts.	3/71	app. 11 mos.	K.O. Anderson (see previous page)	see next line	Davis & Benda see previous page	24,820.00	9,307.50
2.	Oak Ridge Addition S. 107th & 88th Av. Palos Hts.	3/71	as above	as above	761,812.00	Davis & Benda	82,500.00	30,937.50
3.								
4.								

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

2. Supervision of Construction

SEE FOLLOWING PAGE

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

286

Concrete Block Antitrust

QUESTIONNAIRE

Oak Park & River Forest. Oak Park, Ill. #200

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

	A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1.	Oak Park and River Forest High School, Oak Park, Illinois	10-31-66	1966-1969	M.A. Lombard & Son Co. 4245 N. 123rd St.	$5,904,566.15	M.A. Lombard & Son Co.	$580,091.89	$57,160
2.	Oak Park and River Forest High School, Oak Park, Illinois	7-25-68	1968-1971	Costh & Goss Inc. 5103 W. Lake St., Chgo.	$2,420,320.13	Costh & Goss Inc.	$ 57,617.93	?
3.								
4.								

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education, Dist. #200
Oak Park and River Forest High School
201 N. Scoville Avenue
Oak Park, Illinois

2. Supervision of Construction

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

287

Name of governmant entity responding:

Oswego Community Unit District 308

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. East View Adm. & classrooms	Apr. 23, '66	8 mos.	A.L. Desmond, Aurora	$222,173.00	Desmond Const. Aurora, Ill.	$25,500.00	N/A
2. Long Beach Elementary	Aug. 1, '66	12 mos.	Ken Olson, Aurora	462,287.00	Larry Dodd Oswego, Ill.	59,300.00	$7,356.32
3. Add. - Long Beach	Feb., '73	12 mos.	LaVerne Weber, Aurora	604,085.00	Larry Dodd Oswego, Ill.	18,980.00	N/A
4. Additions - Senior High	Apr., '71	18 mos.	Perkins Const., Yorkville	1,327,404.00	Larry Dodd Oswego, Ill.	134,780.00	N/A
5. Additions - E. View & B. Hill	Mar., 71	8 mos.	LaVerne Weber, Aurora	352,029.73	Larry Dodd	40,391.00	4,809.61
6. Additions - Boulder Hill L.C.	Apr., '74	3 mos.	LaVerne Weber, Aurora	36,200.00	Larry Dodd	7,726.00	N/A

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
All contracts above were awarded following competitive bids.			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

Board of Education; Superintendent of Schools; Business Manager

2. Supervision of Construction

Business Manager/Superintendent of Schools

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

288

Concrete Block Antitrust

QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. Palisades Addition	26/3/68	Mar.68-Mar 69	Durkin Bros. 111 S. York, Elmhurst	201,524.00	K.H. & Sons P.O. Box 351 T. Chicago	32,550	5122.50
2. Palisades West-Phase I	14/7/70	7/70 - 3/71	W.F. Fitzsimmons	296,008	W.F. Fitzsimmons	30,870	[illegible]
3. Palisades West-Phase II	13/2/73	2/73 - 4/74	Klein Construction Co.	115,754	Donald Mitchell	22,028	3555.10
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1.				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			
X			
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.

W. E. Hermann

2. Supervision of Construction
Project 1 - Ken Woods 1967
2 - Jack Gawley
3 - Ken Woods

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

289

River Grove Public School
District 85½

Concrete Block Antitrust
QUESTIONNAIRE

Please answer the following questions as fully as possible.
If any requested information is unavailable, please so state.

I. Description of building construction projects let during the period January 1, 1966 - July 1, 1974. Use a separate line for each project, maintaining the same numerical reference in all subsequent questions. (If you had more than four projects, please reproduce these sheets and utilize copies for further answers.)

A. Project Description: Location, Type and I.D. Number of Building	Date Contract Let	Period of Construction	Name & Address of General Contractor	Total Cost Of Project	Name & Address of Masonry Contractor	Cost of Masonry Contract	Cost of Concrete Block
1. River Grove School Addition	May 29 1973	6/73 - 8/74	Meyer Ross 330 Melvin Dr. Northlake, Ill	$922.350.	Celsel Masonry 330 Melvin Northlake Ill	$143,000	$74,000
2.							
3.							
4.							

B. If an Estimate of Costs was Prepared: Name & Address of Person who Prepared Estimate	Date of Estimate	Amount of Estimate for: Total Contract	Masonry Portion	Concrete Block
1. Unavailable				
2.				
3.				
4.				

C. Check whether Contract was:

Competitively bid	Negotiated	Cost-plus	Other
X			

D. Name the officer or individual in your employ during 1966 - 74 who was responsible for:

1. Awarding the Building Contracts.
   Board of Education

2. Supervision of Construction
   Robert Cobb
   July 1 1973 to present

Give the dates when he exercised such responsibility. If no longer in your employ give last known address.

Supreme Court, U. S.
FILED
OCT 13 1976
MICHAEL RODAK, JR., CLERK

No. 76-404

In the

Supreme Court of the United States

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE GRANT OF A WRIT OF CERTIORARI

WILLIAM J. SCOTT
Attorney General

LEE A. FREEMAN, SR.
LEE A. FREEMAN, JR.
Assistant Attorneys General for Respondents, the State of Illinois and its political subdivisions in the Greater Chicago Area

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The Scheffer Press, Inc.—(312) 263-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-404

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE GRANT OF A WRIT OF CERTIORARI

QUESTION PRESENTED

Does the State of Illinois, in its capacity as a builder of public buildings incorporating concrete block, have standing to sue the block manufacturers who fixed and artificially raised prices.

STATEMENT OF ADDITIONAL FACTS

Following criminal indictments of concrete block manufacturers in the Greater Chicago Area, and the acceptance of *nolo contendre* pleas, private treble damage actions were instituted by (a) the State of Illinois and its political

subdivisions; (b) masonry and general contractors; and (c) private builders.

The contractors and the private builders (indirect purchasers of concrete block) proposed settlements with the petitioners. The State expressed opposition to the adequacy of such settlements and their possible adverse effect upon the State's action. This opposition was withdrawn upon the approval of the Court of a stipulation of the settling parties. That stipulation provided, in part:

> "[The settling] defendants hereby affirm and agree that the settlement . . . shall have no effect whatsoever on, and be without prejudice to the State of Illinois case No. 73 C 2427. It is intended that the State of Illinois case will not be prejudiced by the settlement.
>
> The defendants will not take the position that the alleged claims of the plaintiffs and the purported class members in the State of Illinois case have been released or in any way diminished because defendants have settled the claims of masonry contractors and general contractors who purchased Concrete Block which was later sold to, or incorporated into, a building, or structure built for and owned by the State of Illinois, or the public entities named as plaintiffs," or class members. (Letter September 10, 1974, to Honorable William J. Bauer, District Judge from John E. Burke on behalf of defendants, attached hereto as Appendix A)

Petitioners moved for summary judgment claiming that the respondent State and its political subdivisions directly purchased buildings and only indirectly concrete blocks used in such buildings, and therefore they lacked standing to sue under the federal antitrust laws. They asserted that this Court in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), held that only

the first purchaser from conspiratorial price fixers had standing to sue. Petitioners in support of their motions for summary judgment merely submitted questionnaire answers secured by respondents, which located building projects in which concrete blocks were used.

The District Court rejected this attempted misconstruction of *Hanover Shoe* (App. 15-7), but nevertheless, granted summary judgment on the basis of a distinction between "final consumers" and "ultimate consumers." The governmental plaintiffs were classed as "ultimate consumers," which the District Court held were precluded from antitrust standing by the Seventh Circuit decision in *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 315 F.2d 564 (7th Cir.), *cert. denied sub nom., Illinois* v. *Commonwealth Edison Co.*, 375 U.S. 834 (1963).

On appeal, the Seventh Circuit reversed and held that *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co., supra,* which was principally relied upon by the District Court, was misconstrued. (App. 7-8)

ARGUMENT

I.

HANOVER SHOE DOES NOT ESTABLISH AS A RULE OF LAW THAT ONLY THE FIRST PURCHASER OF AN ILLEGALLY PRICE FIXED PRODUCT HAS STANDING TO SUE UNDER THE FEDERAL ANTITRUST LAWS.

Standing to sue was not an issue in *Hanover Shoe.* The holding simply rejected a pass-on *defense* in large part as a matter of policy to further and fortify private litigation as one of the surest weapons for effective antitrust enforcement. It was in that connection that the Supreme Court spoke of the difficulties of proof, under the unique circumstances of that case, to establish or disprove the pass-on defense. The decision did not involve pass-on "as a theory of recovery in the nature of an offense." *In re Western Liquid Asphalt Cases,* 487 F.2d at 197. *See also Boshes v. General Motors Corp.,* 59 F.R.D. 589 (N.D. Ill. 1973, Decker, J.).

As Judge Blumenfeld held in *In re Master Key Antitrust Litigation,* 1973-2 Trade Cas., ¶74,860, p. 94,978 (D. Conn. 1973), *aff'd,* 528 F.2d 5, 12 n.11 (2d Cir. 1975):

> ". . . defendants' invocation of *Hanover,* which rejected a proposed pass-on defense in order to ensure that those who violated the antitrust laws did not escape liability through a multiplication of legal complexity, strikes a discordant note. . . . The attempt to transform a rejection of a defense because it unduly hampers antitrust enforcement into a reason for a complete refusal to entertain the claims of a certain class of plaintiffs seems an ingenious attempt to turn the decision and its underlying rationale on its head."

This Court, in *Hanover Shoe,* did not consider or discuss the offensive rather than defensive use of pass-on where an antitrust plaintiff purchases price-fixed products through middlemen. That decision cannot be taken as establishing an immutable rule that there is no economic connection between a contractor's material costs and his price to the owner for the materials used in construction. The Court's reference to cost-plus contracts was presented as an example where damage proof is facilitated. 392 U.S. at 494. It was not meant to be exclusive; much less should it limit the right of governmental entities to trace the illegal overcharges on concrete block through contractors.

The Seventh Circuit decision here involved is in complete accord with the holding of *Hanover Shoe* and its purpose in seeking to strengthen private antitrust enforcement.

The principle is clear. Section 4 of the Clayton Act provides that "any person injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . ." This Court has repeatedly stressed the broad reach of the antitrust laws and of that section and has held that standing to sue does not turn on the relationship of the claimant to the price fixer. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.,* 334 U.S. 219, 236 (1948); *Perkins* v. *Standard Oil Co.,* 395 U.S. 642, 648 (1969).

More recently, in *Hawaii* v. *American Oil Co.,* 405 U.S. 251 (1972), the Court while denying a state the right to proceed in a *parens patriae* action, recognized the standing of consumer citizens (indirect purchasers) to bring antitrust actions and commended the use of consumer citizen class actions brought by states "to enhance the efficacy

of private actions . . . [and] achieve a more powerful litigation posture." 405 U.S. at 266.

Indeed, *State of Illinois* v. *Bristol Myers Company*, 470 F.2d 1276, 1278 n.4 (D.C. Cir. 1972), construed *Hawaii* as supporting the standing to sue of indirect purchasers.

Hanover Shoe rejected the pass-on defense against a suit by direct purchasers; it did not sanction that defense in a suit by indirect purchasers. There is no conflict between the Seventh Circuit's decision here and this Court's decision in *Hanover Shoe*.

II.

THE MANGANO WEAKNESS

Petitioners further contend a conflict exists between the Third Circuit's decision in the plumbing fixtures antitrust litigation of *Mangano* v. *American Radiator & S.S. Corp.*, 438 F.2d 1187 (3d Cir. 1971), and the Seventh Circuit's decision here involved and with other circuits that have recognized standing of indirect purchasers to sue for overcharges resulting from antitrust violations.

Mangano is limited to the circumstances of that case. It is *sui generis* and obsolete on the basis of the subsequent developments of the law in this area.

In the *Mangano per curiam* decision affirming the lower court's summary dismissal, the Third Circuit carefully limited its holding to the "circumstances" that the dismissal below was based on "the district court's sound discretion to dismiss the actions of the present appellants solely for inexcusable failure to answer interrogatories." 438 F.2d at 1188.

Moreover, counsel for plaintiffs abandoned further judicial review because "defendants have paid him $25,000 to cover his expenses in the *Mangano* case in return for his agreement not to seek certiorari" and he received an additional $19,000 in fees from the settlement that defendants made for his clients. *Lindy Brothers Builders, Inc.* v. *American Radiator & Standard Sanitary Corp.*, 341 F. Supp. 1077, 1095 (E.D. Pa. 1972).

The plumbing antitrust litigation itself illustrates the possible evil consequences of *Mangano*. Defendants used the "passing-on defense" to reduce their exposure to indirect purchasers and, at the same time, avoid substantial liability to their initial (and often friendly) purchasers—the contractors. *Ace Heating & Plumbing Co.* v. *Crane Co.*, 453 F.2d 30 (3d Cir. 1971), affirmed the trial court's approval of the contractors settlement rejecting the argument it was too cheap a settlement. Despite the prior decisions in *Mangano* that indirect purchasers had no standing to recover damages, the Third Circuit saw no reason for the initial purchasers to recover at all, stating:

> "the claims of this class [contractors] were minimized by the probability that overcharges made upon them were passed on to their customers." 453 F.2d at 34.

As Judge Blumenfeld in *In re Master Key Antitrust Litigation, supra,* pertinently commented on page 94,980:

> "Thus, the defendants in the plumbing fixtures cases managed neatly to have it both ways. They escaped any liability to the ultimate purchasers, and then got off with reduced damages on the theory that the parties who had suffered legally cognizable injury had passed on their losses to those same ultimate purchasers. No result could more effectively undercut the important congressional policy embodied in the Clayton Act, which includes awards of treble damages as its primary weapon of enforcement. Dismissal of the governmental plaintiffs at this stage of

the present litigation would provide the stage for the same acrobatics so dextrously performed by the *Mangano* defendants."

As against this outmoded decision in *Mangano* there has been a consistent line of recent decisions by the Courts of Appeal recognizing the standing of indirect purchasers to sue under the federal antitrust laws.*

There is no conflict between circuits with respect to the standing to sue of indirect purchasers.

III.

THE PASS-ON BY CONTRACTORS TO THE STATE PLAINTIFFS OF CONSPIRATORIALLY FIXED PRICES FOR CONCRETE BLOCK ARE FACTUAL QUESTIONS TO BE LEFT FOR PROOF AT TRIAL.

The complaint alleges and the evidence will show that the manufacturer's price fixing of concrete block had a direct and substantial impact on the governmental purchasers. The buildings in question were constructed pursuant to bids. The contractors and subcontractors submitted their bids based upon advance commitments from the manufacturers as to the cost of the block. The bidders plugged these known material costs into their bid as separate line items. This procedure resulted in a direct flow through of

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* *State of Illinois* v. *Bristol-Myers Co.*, 470 F.2d 1276, 1278, n. 4 (D.C. Cir. 1972); *In re Master Key Antitrust Litigation*, 528 F.2d 5, 12, n. 11 (2d Cir. 1975); *South Carolina Council of Milk Producers, Inc.* v. *Newton*, 360 F.2d 414, 417-418 (4th Cir. 1966), certiorari denied, 385 U.S. 934; *Lehigh Portland Cement Co.* v. *City of North Bay Village* (Misc. No. 2364, 5th Cir. 1972), denying appeal in *Southern General Builders, Inc.* v. *Maule Industries, Inc.*, 1973-1 CCH Trade Cases ¶ 74,484 (S.D. Fla. 1972); *Dailey* v. *Quality School Plan, Inc.*, 380 F.2d 484, 487-488 (5th Cir. 1967); *Malamud* v. *Sinclair Oil Corporation*, 521 F.2d 1142 (6th Cir. 1975).

In re Western Asphalt Cases, 487 F.2d 191 (9th Cir. 1973), cert. denied sub nom., Standard Oil Co. v. Alaska, 415 U.S. 919 (1974).

the overcharge resulting from the price fix plans incidental additional damages as a result of the contractor's habit of adding a fixed percentage markup on material.

The public agency thus purchased the concrete blocks indirectly at the alleged fixed excessive prices. A direct and readily provable relationship existed between the manufacturer-petitioners fixed prices for concrete block and the price paid by the State and its public agencies for building projects containing such concrete blocks. The contractors were nothing more than conduits passing through the overcharges to the State and its agencies.

This process of bidding on construction jobs was thus described in *State of Washington* v. *American Pipe & Construction Co.*, 274 F. Supp. 961, 963 (1967):

> "General contractors in bidding for the right to perform a project, of course included a pipe quotation in the bid, and, if the successful bidder, independently purchased pipe and 'resold' it to plaintiffs as part of the completed job. . . . Normally the contractors would but incorporate defendant's quotations in their bids, and purchase the pipe only when awarded a contract."

The Eighth Circuit in *Armco Steel Corp.* v. *North Dakota*, 376 F.2d 206 (8th Cir. 1967), similarly commented on the injury to the State resulting from a price conspiracy affecting metal culverts installed by contractors on state highway projects, as follows:

> "With the same price quotation for the product being made to all contractors bidding on a highway project, with this quotation being used by the contractors as their cost basis for the product in computing their project bid; and with the conspirators having knowledge of this bidding reality and making quotation of their unlawfully-fixed prices on that basis—there could hardly be much question that such prices,

> in their margin of artificiality from lack of competitive play, operated directly to injure the State in increased cost of its highway projects. Indeed, it would be difficult, if not impossible, for the jury to escape the conclusion that the use which was made of the products in the State's highway projects constituted a specific target of the conspiracy—which fact, though not necessary to a recovery right by the State, at least added clarity on the proximateness of the injury." 376 F.2d at 210-211.

It is evident that the petitioners as alleged price fixing conspirators of concrete block reasonably foresaw that the target or area affected by their conspiracy would be the State and its public agencies who constructed buildings using concrete block. The respondents here, were in the target area for which the federal antitrust laws afford protection. *Twentieth Century Fox Films Corp.* v. *Goldwyn,* 328 F.2d 190 (9th Cir. 1964); *Karseal Corp.* v. *Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).

Petitioners in their earlier actions in these proceedings settled antitrust claims with the private builders despite the fact they were indirect purchasers to the same extent as public agency builders, thus recognizing the standing to sue of indirect purchasers.

What is involved in the State case, at this stage, are factual questions which should be left for trial. That is, whether illegal overcharges were passed on by contractors, the extent of such pass on and the allocation of damages between levels in the marketing process. *In re Western Asphalt Cases,* 487 F.2d 191, 201 (9th Cir. 1973), *cert. denied sub nom., Standard Oil Co.* v. *Alaska,* 415 U.S. 919 (1974). Summary judgment was inappropriate to dispose of these issues under the guise of "standing to sue."

IV.

THE AFFIRMANCE OF STANDING BY THE SEVENTH CIRCUIT IS CONSISTENT WITH THE SWEEPING LANGUAGE OF THE STATUTE, THE POLICY ENCOURAGING PRIVATE ENFORCEMENT OF THE ANTITRUST LAWS, THE DECISIONS OF THIS COURT AND THE SECOND, FOURTH, FIFTH, SIXTH, EIGHTH, NINTH AND DISTRICT OF COLUMBIA CIRCUIT COURTS.

Petitioners are mistaken in their views that affording standing to indirect purchasers would lead to "insufferable" and "prodigious" problems of proof and an "insolvable morass" consuming judicial energy. (Pet. Br. 10) What they are in effect seeking is the complete denial of the right of public agencies to redress injuries resulting from price conspiracies in the important construction field. In contrast, effective relief under efficient judicial management has been achieved by indirect purchaser public agencies involving construction materials such as gypsum wallboard, metal culverts, cast iron pipe, liquid asphalt, contract hardware, structural steel, brass mill tubing, steel conduit pipe, plumbing fixtures and many others.

Petitioners' claim of possible multiple recoveries for the same overcharge is especially inappropriate in this action, where petitioners expressly stipulated that their settlement with contractors would be completely without prejudice to the rights of the State of Illinois and its political subdivisions to recover for excess prices conspiratorially fixed on concrete block installed by contractors in public buildings and structures. (App. A)

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

Respectfully submitted,

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October 13, 1976

APPENDIX A

September 10, 1974

Honorable William J. Bauer
U.S. District Court Judge
219 South Dearborn
Room 2156
Chicago, Illinois 60604

Re: State of Illinois v. Ampress Brick Company, Inc., et al.

Dear Judge Bauer:

This is to affirm the statements which the undersigned made on behalf of the defendants noted below during the hearing on September 5, 1974 in the Concrete Block litigation. Those defendants hereby affirm and agree that the settlement of the following cases: *Corona Construction Co., Inc.*, No. 73 C 1082; *Home Builders of America, Inc.*, No. 73 C 1278; *Mor-Well General Contractors, Inc.*, No. 73 C 1458 and *Normandy Hill, Inc.*, No. 74 C 652, shall have no effect whatsoever on, and be without prejudice to the State of Illinois case No. 73 C 2427. It is intended that the State of Illinois case will not be prejudiced by the settlement.

The defendants will not take the position that the alleged claims of the plaintiffs and the purported class members in the State of Illinois case have been released or in any way diminished because defendants have settled the claim of masonry contractors and general contractors who purchased Concrete Block which was later sold to, or incorporated into, a building, or structure built for and owned by the State of Illinois, or the public entities named as plaintiffs, or the members of a purported hospital class, in part supported by public funds.

Defendants have and will continue to maintain that the State of Illinois, the public entities named as plaintiffs and the members of the purported hospital class have not suffered damages recognizable under the antitrust statutes. The settlement will have no effect on this defense, or any other defense which the defendants may raise.

Finally, defendants agree that this settlement shall have no precedential effect with respect to the State of Illinois case.

Respectfully submitted,

/s/ JOHN E. BURKE
JOHN E. BURKE
On behalf of the defendants in the above named cases to be settled, namely Ampress Brick Company, Inc., American Brick Company, E. L. Ramm Company, Chicago Block Co., Inc., Illinois Brick Company, Heights Block, Inc., Northfield Block Co., SGM Corporation, Joliet Concrete Products, Inc., and Joseph Metz & Sons, Inc.

JEB:mfl
cc Lee Freeman, Sr., Esq.

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No. 76-404

Supreme Court, U. S.
FILED
OCT 26 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF THE GRANT OF A WRIT OF CERTIORARI

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF THE GRANT OF A WRIT OF CERTIORARI

Statement of Additional Facts

Following the federal government's filing of civil and criminal actions against petitioners, numerous civil treble-damage actions were filed, all alleging the same conspiracy and all seeking to recover the same alleged overcharge. When settlement of the civil class actions was proposed, the State of Illinois (hereinafter the "State") objected to the settlements even though it was not included in any settling class and thus would not be bound by any order approving the settlement.

The State has quoted the first two paragraphs of a letter wherein petitioners assured the District Court that settlement of other cases would not dispose of the State's case; that is, any dismissal order would not release the State's purported claim. (State's Br. p. 2). The next paragraph of that letter, not quoted by the State, informed the Court that petitioners would persist in their position taken here, *i.e.*, that the State has no claim under the antitrust laws. (State's Appendix at p. 2a).

Significantly, neither the District Court nor the Court of Appeals has regarded the letter as vitiating in any respect the position taken in petitioners' motion for summary judgment.

ARGUMENT

I.

THE STATE HAS ERRONEOUSLY CHARACTERIZED THE PASS-ON PROBLEM AS AN ISSUE OF STANDING TO SUE.

The decisions in both *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), and the Third Circuit *plumbing fixture cases** were based upon the insuperable evidentiary problems involved in proving a pass-on. Subsequent decisions which have refused to apply *Hanover* or the *plumbing fixture cases* to bar indirect purchaser claims, generally have merely bypassed the pass-on evidentiary problem by treating it as one of standing. See Handler & Blechman, *Antitrust and the Consumer Interest: The Fallacy of Parens Patriae and a Suggested New Approach*, 85 Yale L.J. 626, 644-6 (1976). The State's characterization of this case as involving only a question of standing similarly seeks to evade and postpone final resolution of the evidentiary problems in proving pass-on.

After characterizing the pass-on issue as merely one of standing, the State then argues that the standing question has been resolved by this Court's opinion in *Hawaii* v. *Standard Oil Co. of Calif.*, 405 U.S. 251, 266 (1972). On

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* *Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971), *affirming Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970); *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 381 (E.D. Pa. 1970).

the contrary, the passage quoted at pages 5 and 6 of the State's brief simply recognizes that a state is not automatically foreclosed from serving as the representative of a class of private consumers.*

Indeed, *Hawaii* expressly reaffirmed the holding of *Hanover Shoe* and based its rejection of a *parens patriae* claim in part upon the language used in *Hanover* to reject the pass-on defense. In *Hawaii*, this Court stated (405 U.S. at 263, n. 14):

> ". . . damages are established by the amount of the overcharge. Under §4, courts will not go beyond the fact of this injury to determine whether the victim of the overcharge has partially recouped its loss in some other way, even though a State, for example, may ultimately recoup some part of the overcharge through increased taxes paid by the seller. See *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481, 489 (1968). Measurement of an injury to the general economy, on the other hand, necessarily involves an examination of the impact of a restraint of trade upon every variable that affects the State's economic health—*a task extremely difficult, 'in the real economic world rather than an economist's hypothetical model.' Id.*, at 493." (Emphasis added.)

By thrusting the federal courts back into the complex economic pass-on questions, the Seventh Circuit is in conflict with the policy underlying *Hawaii* as well as in direct conflict with *Hanover Shoe*.

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* The State's reliance on *State of Illinois* v. *Bristol Myers Co.*, 470 F.2d 1276, 1278 n.4 (D.C. Cir. 1972) is similarly misleading. The D. C. Circuit Court did not address the pass-on issue; rather, it simply noted this Court's suggestion that a state might serve as a class representative under some circumstances.

II.

THERE IS A CONFLICT AMONG THE CIRCUITS: THE STATE'S ATTEMPT TO MINIMIZE THIS CONFLICT IS UNPERSUASIVE.

The State is in error when it denies that a conflict exists between the Seventh Circuit's decision here and that of the United States Court of Appeals for the Third Circuit in *Mangano* v. *American Radiator and Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971). Contrary to the State's argument, the *Mangano* decision was not limited to the appellants' failure to answer interrogatories. Rather, the Third Circuit met the pass-on issue squarely. The Court stated (438 F.2d at 1188):

> "Present consideration of the alternative ground of decision may facilitate the conclusion of this litigation. *Therefore, we have considered and affirm the district court's decision as based upon substantive law involved in the homeowners', commercial building owners', and apartment building owners' cases.* More particularly, absent a showing by the plaintiffs that their purchases were made 'pursuant to a preexisting cost-plus contract or analogous fixed markup type of arrangement,' . . . *it is appropriate in light of Hanover Shoe, Inc.* v. *United Shoe Machinery Corp. . . . to dismiss these three cases.*" (Footnote and citations omitted; emphasis added.)

After dismissing *Mangano* as "outmoded," the State erroneously asserts that there has been a consistent line of recent appellate decisions supporting the Seventh Circuit. (State's Br. fn at p. 8). Two of the State's "recent decisions" pre-date this Court's resolution of the pass-on issue in *Hanover Shoe*. Another simply refused to hear a certified appeal. See *Lehigh Portland Cement Co.* v. *City of North Bay Village* (Misc. No. 2364, 5th Cir. 1972), denying appeal in *Southern General Builders, Inc.* v.

Maule Industries, Inc., 1973-1 TRADE CASES ¶74,484 (S.D. Fla. 1972). *In re Master Key Antitrust Litigation*, 528 F.2d 5, 12 n. 11 (2d Cir. 1975), notes the conflict between the Third and Ninth Circuits and then expressly declines to decide the issue. *Malamud* v. *Sinclair Oil Corp.*, 521 F.2d 1142 (6th Cir. 1975), articulated a standing test but did not address the pass-on issue.

III.

THE PASS-ON QUESTION WAS PROPERLY RESOLVED ON MOTION FOR SUMMARY JUDGMENT.

This case was decided by the District Court on a Motion for Summary Judgment, not on a Motion to Dismiss. Before the District Court ruled, the State advised the District Court that petitioners' motion was "now *sub judice* and ripe for decision."* In support of the motion, petitioners had adduced admissions from the State and the other governmental entities that concrete block had not been purchased from defendants either directly or indirectly. Rather, the record showed that the State and the other governmental entities purchased buildings, of which concrete block was one component part, from unrelated third parties pursuant to competitive bidding. (App. 11).

The State contends that the complaint alleges and the evidence will show that the alleged price fixing of concrete block had a direct and substantial impact on government purchases of buildings.

> "The bidders plugged these known material costs into their bid as separate line items. This procedure resulted in a direct flow through of the overcharge resulting from the price fix plans incidental additional damages as a result of the contractor's habit of adding a fixed percentage markup on material."
> (State's Br. p. 8-9)

* See Paragraph III.C. of "Summary of Concrete Block Antitrust Cases Prepared for Honorable Alfred Y. Kirkland" by the State's counsel attached as an appendix to this brief.

The State's argument should be rejected. The State had the opportunity but failed to offer any affidavits or deposition testimony regarding separate line items, contractor's habits, or any other facts contradicting or explaining the position taken by petitioners. In short, as the State admitted to the District Court, the summary judgment motion was ripe for decision.

Even assuming, however, that the State's assertions raise factual questions, *Hanover Shoe* precludes the State from attempting to prove its assertions. In *Hanover Shoe*, the defendant maintained that there could be no injury

> "where the overcharge is imposed equally on all of a buyer's competitors and where the demand for the buyer's product is so inelastic that the buyer and his competitors could all increase their prices by the amount of the cost increase without suffering a consequent decline in sales." 397 U.S. at 492.

It was in response to this claim that this Court made its statements about the "insuperable difficulty" of recreating pricing decisions "in the real economic world rather than an economist's hypothetical model." 392 U.S. at 493.

Conclusion

The State's Brief does not diminish the need for a definitive decision by this Court. There is an inherent conflict between the Court of Appeals' decision below and this Court's opinion in *Hanover Shoe*. Recognition of this inherent conflict has led to conflicting decisions and considerable confusion in the lower federal courts. Petition-

ers believe that this case presents an appropriate vehicle for resolution of the lingering pass-on problem.

For the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX

III. *Motions Pending for Decision in State of Illinois Action*

A. *Defendants' Rule 37 Motion to Dismiss Governmental Entities who Failed to Answer Interrogatories*

Defendants' motion was filed on November 6, 1974. Plaintiffs' response was filed on January 10, 1975, and defendants' reply brief was filed on January 20, 1975. Unless the Court desires oral argument, the motion is ripe for disposition.

B. *Defendants' Rule 21 Motion to Drop All Governmental Plaintiffs Except the State of Illinois*

Defendants' motion was filed on December 20, 1974. Plaintiffs' response was filed on January 20, 1975, and defendants' reply brief was filed on February 5, 1975. Unless the Court desires oral argument, this motion is also ripe for decision.

C. *Defendants' Motion for Partial Summary Judgment*

Defendants' motion was filed on January 6, 1975. Plaintiffs' memorandum in opposition to defendants' motion was filed on February 4, 1975. Defendants' reply brief was filed on February 28, 1975. Unless the Court desires oral argument, this motion is now *sub judice* and ripe for decision.

Respectfully submitted, for
the State of Illinois, et al.,
plaintiffs
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William J. Scott
Attorney General

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

BRIEF FOR PETITIONERS

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ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 536 F.2d 1163. The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 67 F.R.D. 461. The opinions are printed in the Appendix to the Petition for a Writ of Certiorari at pages App. 1 and App. 10, respectively.*

* Abbreviated hereinafter as "Cert. Pet. App." Citations to the appendix to the briefs are referred to as "A."

JURISDICTION

The judgment of the Court of Appeals reversing the District Court was entered on June 22, 1976. (Cert. Pet. App. 23.) The Petition for a Writ of Certiorari was filed on September 17, 1976, and the writ was granted on November 8, 1976. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

Section 1 of the Sherman Act, 15 U.S.C. §1, provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . ."

Section 4 of the Clayton Act, 15 U.S.C. §15, provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

QUESTION PRESENTED

In a civil antitrust suit brought by the State of Illinois alleging price-fixing by manufacturers of concrete block, can the State of Illinois, which did not purchase concrete block but instead purchased buildings, one of whose components was concrete block, recover for the alleged overcharge paid by the first purchaser of the concrete block, on the theory that the overcharge was passed on to the State of Illinois, even though the chain of distribution of concrete block did not involve any cost-plus or similar pricing arrangements?

STATEMENT OF THE CASE

Respondent, the State of Illinois (hereinafter the "State"), on behalf of itself and various local governmental entities in the Greater Chicago area, brought this civil action charging that the defendants (Petitioners), all of whom manufacture and/or sell concrete block, violated Section 1 of the Sherman Act, 15 U.S.C. §1, by conspiring to fix the price of concrete block. (A. 6.) The State seeks to recover the alleged overcharge in the price of concrete block used in public building projects. Jurisdiction of the District Court was predicated upon Section 4 of the Clayton Act, 15 U.S.C. §15.

In 1973, the United States indicted the defendants, charging that they violated Section 1 of the Sherman Act by conspiring to fix the price of concrete block.* In the wake of the federal indictment, numerous civil treble-damage actions were filed, all alleging the same conspiracy and seeking to recover the same alleged overcharge.** These cases were instituted by masonry contractors, general contractors, and private builders, as well as the State. Several

---

* *United States* v. *Ampress Brick Co.*, No. 73 CR 312, in the United States District Court for the Northern District of Illinois, Eastern Division.

** Other than the State's case, these civil cases were *Corona Construction Co.* v. *Ampress Brick Co.*, No. 73 C 1082; *Home Builders of America, Inc.* v. *Ampress Brick Co.*, No. 73 C 1278; *Mor-well General Contractors, Inc.* v. *Ampress Brick Co.*, No. 73 C 1458; *Normandy Hill, Inc.* v. *Ampress Brick Co.*, No. 74 C 652; and *Raspanti Masonry* v. *Ampress Brick Co.*, No. 74 C 769. The federal government also brought a civil case: *United States* v. *Ampress Brick Co.*, No. 73 C 1016. All of these suits were brought in the United States District Court for the Northern District of Illinois, Eastern Division.

of the cases were class actions, and all actions except the State's were settled.* (A. 204.)

In the State's case, defendants propounded interrogatories to the plaintiffs seeking detailed information about their purported purchases of concrete block. Of the more than 700 governmental entities which the State sought to represent (A. 16-48), only 253 responded to the interrogatories.** The answers of these 253 plaintiffs revealed the following facts. Only four plaintiffs actually purchased concrete block. * * * (A. 67-68, 77.) The remaining 249 plaintiffs did not buy concrete block, but rather bought buildings, a package of goods and services of which concrete block was merely one component part. (A. 67-76.) Moreover, the concrete block did not reach the public en-

* When settlement of the other cases was proposed, the State objected even though it was not included in any settling class and thus would not be bound by any order approving the settlement. Defendants assured the District Court that settlement of the other cases would not release the State's purported claim. However, defendants also informed the District Court that they would persist in their position that the State had not suffered damages cognizable under the antitrust laws. (A. 57, 62.)

** The answers to the interrogatories were in the form of answers to a questionnaire sent out by plaintiffs' counsel. (All of the questionnaire answers were filed with the District Court and are in the record.) Samples of the answers are found in the Appendix at pages 211-90. For the plaintiffs who did not respond to the questionnaire, the State's counsel sought to provide answers by his own affidavit referring to newspaper summaries of construction news. (A. 78-201.)

*** The claims of these four direct purchasers of block are not at issue here, since defendant's summary judgment motion, which was granted, was only directed at the indirect purchaser plaintiffs. (A. 4.)

tities through pre-existing cost-plus contracts or any similar pricing arrangement. Instead, the building projects were awarded pursuant to state statutes mandating competitive bidding.* (See Questionnaire Answer I.C.)

The concrete block manufactured by defendants is sold to masonry contractors. The masonry contractors submit bids to general contractors not just for concrete block, but for all of the goods and services that comprise the masonry portions of the building projects. The general contractor in turn collects all sub-bids for goods and services and compiles a bid for a particular building project in competition with other general contractors. (See Questionnaire Answers I.C. and I.E.; A. 9-10.) Thus, before any of defendants' concrete block reached the public building projects, it passed through at least two separate, unrestrained levels in the chain of distribution—the masonry contractors and the general contractors—where complex and independent pricing decisions were made.** No allegation

* State of Illinois statutes mandate competitive bidding subject to certain limited exceptions, e.g., contracts for small dollar amounts. See, Ill. Rev. Stat. ch. 127, §132.6 (state agencies); Ill. Rev. Stat. ch. 122, §10-20.21 and §35-10 (school districts); Ill. Rev. Stat. ch. 24, §8-9-1 and §8-10-13 (municipalities); Ill. Rev. Stat. ch. 34, §5028 (county hospitals); and Ill. Rev. Stat. ch. 34, §1006 (counties).

** The complexity of the bidding process and the inadequacy of plaintiffs' proof is demonstrated by the fact that less than seven percent of the plaintiffs could state the cost of the concrete block incorporated into their building projects. Only forty-eight of the more than seven hundred plaintiffs were able to report the cost of the concrete block. Twenty of these entities reported the cost on only some projects, and seven others appeared to be estimating the cost. (See Questionnaire Answers I. A. and B.) The Chicago public school system which had 60 building projects was unable to state the cost of the concrete block or the name of the masonry contractor on even one project. (A. 217-34.)

has been made and no proof has been offered that the defendants controlled the two intervening levels in the chain.

Relying upon plaintiffs' answers to the interrogatories, the defendants moved for summary judgment against all plaintiffs who bought buildings and thus were indirect purchasers of concrete block. The ground for the motion was that, under this Court's opinion in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), these plaintiffs were unable to recover for any alleged pass-on of the alleged overcharge in the price of concrete block since they did not fit the narrow cost-plus exception of *Hanover*. Plaintiffs did not submit by affidavit, deposition testimony or interrogatory answers any contradictory or explanatory facts in opposition to the summary judgment motion. Indeed, counsel for the State was willing to stand on the factual record created by the plaintiffs' interrogatory answers and indicated to the District Court that the motion was ripe for decision. (A. 203, 209-10.)

The District Court classified these plaintiffs as ultimate consumers, i.e., those who obtain a finished product from a middleman in the chain of distribution who altered or added to the goods received from the manufacturer. The District Court held that the ultimate consumer's injury, if any, was too remote and granted summary judgment. Treating the issue merely as one of standing, the Court of Appeals reversed.

SUMMARY OF ARGUMENT

The Seventh Circuit erred when it reversed the District Court's summary judgment against all plaintiffs who were not purchasers of concrete block, but were purchasers of buildings containing block. The block did not pass through a chain of distribution pursuant to any pre-existing cost-plus contracts or other similar pricing arrangements. Instead, it passed through two unrestrained levels of distribution where independent pricing decisions were made in a competitive bidding process.

The Seventh Circuit's decision is at odds with this Court's decision in *Hanover,* where this Court concluded that, absent a pre-existing cost-plus contract or similar pricing arrangement, the first purchaser of a product can recover for an overcharge in the price of a product, regardless of any pass-on. Since defendants cannot even assert the pass-on defense against the first purchaser, necessarily the indirect purchasers cannot recover for the same overcharge, or defendants will be subjected to multiple recoveries (trebled), a totally unwarranted result.

In the face of this problem, there are two choices: either overrule *Hanover* and allow all purchasers in the chain of distribution to maintain competing claims for the same overcharge, or continue to apply *Hanover* and preclude recoveries by indirect purchasers. The latter choice is the only tenable one. The result in *Hanover* was premised largely upon the fact that proof of a pass-on involves "insurmountable" evidentiary problems. Since proof of a pass-on is inherently impossible, the issue should not be interjected into antitrust cases. Otherwise, these suits will be needlessly complicated, diverting resources of the federal judiciary into what is ultimately a futile task.

ARGUMENT

I.

UNDER HANOVER, ONLY DIRECT PURCHASERS OF A PRICE-FIXED PRODUCT CAN PROVE AND RECOVER DAMAGES, ABSENT A PRE-EXISTING COST-PLUS CONTRACT.

A civil antitrust claim is not established merely by proving that an antitrust violation has occurred. There must also be proof that the violation injured the claimant, as well as what damage it caused. In situations in which an unlawful overcharge has been made for a product which goes through a chain of distribution from the manufacturer to the ultimate consumer, the question has arisen of which persons in the chain are able to prove that they have actually suffered legally cognizable injury and have been damaged by the overcharge. In other words, the issue is whether tracing the pass-on of the overcharge through the chain is inherently impossible because the evidentiary problems are legally insurmountable.

The controlling decision on the pass-on issue is *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), in which this Court squarely faced the issue, concluded that the difficulties in proving a pass-on were inherently insuperable, and effectively ruled that, subject to the cost-plus exception discussed below, only the first or direct purchaser could recover the full overcharge (trebled), *regardless* of any purported passing on of that overcharge to others in the chain of distribution, *i.e.*, the indirect purchasers.

In *Hanover*, a monopolist was charged with exacting an illegally high price for its product, shoe manufacturing machinery. The suit was brought by a lessee of the machinery who asserted, and the trial court so found, that, if the monopolist had sold the machinery instead of leasing it, the cost would have been lower. The monopolist contended and offered evidence that the lessee, by increasing the price of the shoes which it made with the machinery, had passed on the overcharge to its customers and thus had suffered no injury. The trial court rejected the defense and refused even to consider the evidence of the pass-on, deeming it to be irrelevant. This Court agreed.

This Court not only rejected the pass-on defense, but adopted principles of broad applicability.

> "We think it sound to hold that when a buyer shows that the price paid by him for materials purchased for use in his business is illegally high and also shows the amount of the overcharge, he has made out a prima facie case of injury and damage within the meaning of §4.
>
> "... *We hold that the buyer is equally entitled to damages if he raised the price for his own product.* As long as the seller continues to charge the illegal price, he takes from the buyer more than the law allows." (Emphasis added.) 392 U.S. at 489.

In holding that the first purchaser of a price-fixed product is the proper party to recover for the overcharge, the Supreme Court explicitly reaffirmed its prior holdings in *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 203 U.S. 390 (1906); *Thomsen* v. *Cayser*, 243 U.S. 66 (1917); *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531 (1918); and *Adams* v. *Mills*, 286 U.S. 397 (1932) (392 U.S. at 489-90), and quoted approvingly from its opinion in *Southern Pacific:*

> "*The general tendency of the law, in regard to damages at least, is not to go beyond the first step.* . . . The carrier ought not to be allowed to retain his illegal profit and the *only one* who can take it from him is the one that alone was in relation with him and from whom the carrier took the sum." (Emphasis added.) 392 U.S. at 490-91, n. 8.*

In rejecting the pass-on defense, this Court stressed the virtual impossibility of proving the pass-on to others in the chain of distribution, whereas proof that the first purchaser is injured by the overcharge is relatively easy and certain. It is quite clear that the first purchaser pays the overcharge, and consequently suffers economic injury. Absent the overcharge, the initial purchaser would have made more profit upon resale.

> "If in the face of the overcharge the buyer does nothing and absorbs the loss, he is entitled to treble damages. This much seems conceded. The reason is that he has paid more than he should and his property has been illegally diminished, for had the price paid been lower his profits would have been higher. It is also clear that if the buyer, responding to the illegal price, maintains his own price but takes steps to increase his volume or to decrease other costs, his right to damages is not destroyed. Though he may manage to maintain his profit level, he would have made more if his purchases from the defendant had cost him less. We hold that the buyer is equally entitled to damages if he raises the price for his own product. . . . At whatever price the buyer sells, the price he pays the seller remains illegally high, and his profits would be greater were his costs lower." 392 U.S. at 489.

* This Court later reaffirmed its holding in *Hanover. Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 263 n.14 (1972).

In contrast with the situation of the first purchaser, this Court realized that the proof of a pass-on to an indirect purchaser normally presents inherently insoluble evidentiary difficulties. This is so because the indirect purchaser buys the product in an unrestrained market. It is not possible with any degree of certainty to reconstruct either the factors which affect the pricing decision, or the decision itself.

> "A wide range of factors influence a company's pricing policies. Normally the impact of a single change in the relevant conditions cannot be measured after the fact; indeed a businessman may be unable to state whether, had one fact been different (a single supply less expensive, conditions more buoyant, or the general economic labor market tighter, for example) he would have chosen a different price. Equally difficult to determine, in the real economic world rather than an economist's hypothetical model, is what effect a change in a company's price will have on its sales. Finally, costs per unit for a different volume of total sales are hard to estimate. Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price had the overcharge been discontinued. *Since establishing the applicability of the passing-on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable.*" (Emphasis added.) 392 U.S. at 492-93.

Analysis of the opinion in *Hanover* demonstrates that the inability to prove a pass-on exists as a matter of law. The Court considered what must be the best possible case of proof of a pass-on—*i.e.*, that the first purchaser raised

his resale price for the product in the exact amount of the overcharge—and concluded that such a showing was insufficient. Necessarily, showing that a price increase was some amount not equal to the overcharge will be even more unsatisfactory.

The Court recognized a limited exception to its ruling that the defendant could not raise the pass-on defense against the first purchaser, and that was where the purchaser resold the product pursuant to a "pre-existing 'cost-plus' contract" or very similar pricing arrangement. Such an exception is reasonable. In a cost-plus situation, an overcharge could be traced since the resale price is derived by an arithmetical computation unaffected by fluctuating market conditions and subjective pricing decisions of independent businessmen. Consequently, the factors which usually make it impossible to prove a pass-on are not present, and proof that the first purchaser was not damaged would be feasible. 392 U.S. at 494.

While the *Hanover* case posed the issue in terms of rejecting the assertion of the pass-on defense rather than denying a claim by an indirect purchaser, the result is the same. If the proof of a pass-on is virtually impossible for a defendant, it is equally impossible for an indirect purchaser. The factors which account for the intrinsic inability to establish a pass-on do not change. Consequently, *Hanover* draws a line which when applied determines that, absent pre-existing cost-plus contracts or similar pricing arrangements, indirect purchasers cannot sue and recover for overcharges; only the first purchaser can.

This logical result was recognized by the Third Circuit in *Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971), *affirming, Philadelphia Housing Authority* v. *American Radiator & Standard Sani-*

tary Corp., 50 F.R.D. 13 (E.D. Pa. 1970). *Accord, Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 323 F.Supp. 381 (E.D. Pa. 1970). In *Mangano*, the plaintiffs (indirect purchasers) raised the pass-on issue, charging that illegal overcharges by manufacturers of plumbing fixtures had been passed on to them increasing the cost of the buildings which plaintiffs purchased. Since plaintiffs did not fit the cost-plus exception to *Hanover*, judgment was entered against them.*

II.

THE SEVENTH CIRCUIT AND OTHER COURTS HAVE FAILED TO FOLLOW THE DICTATES OF HANOVER AND HAVE ERRONEOUSLY ALLOWED INDIRECT PURCHASERS TO MAINTAIN CLAIMS FOR ALLEGED PASS-ONS.

In the case at bar, the plaintiffs are clearly not first or direct purchasers of concrete block. Instead, they are indirect purchasers and then only to the extent that concrete block is a component of the buildings which they bought. It is also clear that the pricing mechanisms through which the concrete block passed into the buildings did not involve pre-existing cost-plus contracts or similar pricing

* Other decisions in accord with the view that indirect purchasers cannot raise the pass-on issue include: *Denver* v. *American Oil Co.*, 53 F.R.D. 620 (D. Colo. 1971); *United Egg Producers* v. *Bauer International Corp.*, 312 F.Supp. 319 (S.D.N.Y. 1970); *Donson Stores, Inc.* v. *American Bakeries Co.*, 58 F.R.D. 481 (S.D.N.Y. 1973); *Akron* v. *Laub Baking Co.*, 1972 Trade Cas. ¶73,930 (N.D. Ohio 1972); *Stern* v. *Lucy Webb Hayes Nat'l Training School*, 367 F.Supp 536 (D.D.C. 1973); *Travis* v. *Fairmont Foods Co.*, 346 F.Supp. 679 (E.D. Pa. 1972); *Minielli Cement Contracting, Inc.* v. *Richter Concrete Corp.*, 62 F.R.D. 381 (S.D. Ohio 1973).

arrangements. In answers to interrogatories, plaintiffs uniformly stated that their building projects were not awarded on a cost-plus contract basis. Instead, they were awarded pursuant to competitive bids submitted by general contractors, who in turn received bids from masonry contractors. Thus, the concrete block passed through two independent, untainted levels of pricing—the masonry contractors and the general contractors.

In just such a situation, the court in *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 323 F.Supp. 381 (E.D. Pa. 1970), applying *Hanover* and the Third Circuit rule, dismissed the claims of public entities suing for overcharges on plumbing fixtures incorporated into public buildings.

> "The public bodies here entered into contracts for their finished structures as a result of sealed bids submitted by general contractors and not as a result of negotiated prices. The requirement that competitive bids be submitted necessarily demands that the contractor bear the full risk if prices are inaccurately estimated. Such an arrangement is distinctly different from the cost-plus type of a contract which might permit the tracing to an end user of the increased prices paid for the fixtures in question. The facts here then do not fall within the exception noted by Mr. Justice White in *Hanover* (392 U.S. at 404). . . ." 323 F.Supp. at 385.

The pricing mechanism here is the same as in *Philadelphia Housing Authority*. The facts are undisputed, and the plaintiffs offered no evidence to show that somehow the concrete block goes through a cost-plus type of mark-up on its way into the public buildings.* Despite this record, the

* One purpose of the summary judgment motion was to force plaintiffs to submit some evidence, if they had any, that they fit the cost-plus exception in *Hanover*. Having failed to do that, summary judgment was proper.

Seventh Circuit reversed the District Court's grant of summary judgment and held that these indirect purchasers could sue and recover for the alleged overcharge. That decision is contrary to the policy set forth in *Hanover* and was error.

The Seventh Circuit is not the only court which has refused to apply *Hanover* properly.* These courts offer various rationales to avoid following *Hanover*. For instance, the Seventh Circuit in this case ignored the undisputed factual record before the District Court, and mistakenly labeled the issue as one of standing.** (Cert. Pet. App. 8.) The issue here and in *Hanover*, however, is not standing, but rather proof of injury and monetary damage. The decision in *Hanover* was based upon the insuperable evidentiary problems involved in proving a pass-on. This Court concluded in *Hanover* that only evidence of pricing pursuant to a pre-existing cost-plus contract or other similar arrangement could satisfactorily prove a pass-on with rea-

* See *e.g.*, *In re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973), *cert. denied sub nom.*, *Standard Oil Co.* v. *Alaska*, 415 U.S. 919 (1974); *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 (D. Conn. 1973); *Carnivale Bag Co.* v. *Slide-Rite Mfg. Corp.*, 395 F.Supp. 287 (S.D.N.Y. 1975); *Lefrak* v. *Arabian American Oil Co.*, 1975-2 Trade Cas. ¶60,621 (E.D.N.Y. 1975).

** Other cases which label the issue as standing to get around *Hanover* are *Western Liquid Asphalt*, *Master Key*, *Carnivale Bag* and *Boshes*, *supra*. The court in *Western Liquid Asphalt* sidestepped the evidentiary issue by *assuming* that the plaintiffs could prove a pass-on (487 F.2d at 197 n.5), an assumption which is totally unjustifiable in light of *Hanover*, since the uncertainty and difficulty of such a task is precisely what led this Court to reject the attempt to do so.

sonable certainty and that anything less than that would be legally insufficient. The Court did not say that, all things considered, the defendant's evidence of a pass-on was unpersuasive, but instead stated that defendant was not even entitled to submit the evidence. 392 U.S. at 494. If defendants cannot be heard on this matter, neither can plaintiffs. Thus, courts like the Seventh Circuit which treat the issue as one of standing are merely postponing the ultimate confrontation with the hard evidentiary problems.*

Another excuse used by the courts to justify letting indirect purchasers sue is that such suits help to enforce the antitrust laws and ensure that defendants have to disgorge their ill-gotten gains. The former point is contrary to this Court's conclusion in *Hanover* that, upon balancing all relevant interests, vigorous enforcement of the antitrust laws is accomplished by allowing the first purchasers to sue and recover all of the overcharge without getting bogged down in the pass-on issue. 392 U.S. at 494. As to the latter point, in *Bangor Punta Operations, Inc.* v. *Bangor & Aroostook Ry.*, 417 U.S. 703, 717 (1974) (a securities case), this Court rejected just such an argument.

> "*If deterrence were the only objective, then in logic any plaintiff willing to file a complaint would suffice.* No injury or violation of a legal duty to the particular plaintiff would have to be alleged. The only prerequisite would be that the plaintiff agree to accept the recovery, lest the supposed wrongdoer be allowed to escape a reckoning. *Suffice it to say that we have been referred to no authority which would support so novel a result, and we decline to adopt it.*" 417 U.S. at 717. (Footnote omitted; emphasis added.)

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* Handler and Blechman, *Antitrust and the Consumer Interest: The Fallacy of Parens Patriae and a Suggested New Approach*, 85 Yale L. J. 626, 643 (1976).

See also, *Hawaii* v. *Standard Oil Co.*, 405 U.S. 259, 262-64 (1972).

In the final analysis, when the decisions allowing indirect purchasers to sue for alleged pass-ons are weighed against the dictates of *Hanover*, it is obvious that they are not legitimate exceptions to *Hanover* and thus are erroneous.

III.

ALLOWING INDIRECT PURCHASERS TO RECOVER FOR ALLEGED OVERCHARGES CREATES THE SERIOUS PROBLEM OF MULTIPLE RECOVERIES.

One of the most serious and unwarranted consequences of the decisions which allow indirect purchasers to sue and recover for alleged overcharges is that they subject defendants to multiple recoveries (trebled) for the same alleged overcharge. This fact was explicitly recognized by the court in *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970), and was one of the reasons for holding that the indirect purchasers there had no claim.

While everyone seems to concede that multiple recoveries for the same alleged overcharge is an unacceptable result,* no court which allows indirect purchasers to trace the pass-on has satisfactorily explained how it can be avoided.

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* *E.g.*, *Illinois* v. *Ampress Brick Co.*, Cert. Pet. App. 8; *In re Western Liquid Asphalt Cases*, 487 F.2d 191, 198 (9th Cir. 1973); *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589, 596 (N.D. Ill. 1973); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 at p. 94,979 (D. Conn. 1973). *Cf. Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 264 (1972).

Some courts have suggested that doctrines such as the statute of limitations and collateral estoppel would minimize the potential for duplicative recoveries. See *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 (D. Conn. 1973). The statute of limitations, of course, will bar duplicative recoveries only if someone in the chain of distribution fortuitously happens to delay in filing a claim. Frequently, as in this case, people from all levels of the chain file competing claims for the same overcharge. For collateral estoppel to be effective, the party to be estopped must have had a full and fair opportunity to litigate the factual question at issue. *Blonder-Tongue Laboratories, Inc.* v. *Univ. of Illinois Foundation*, 402 U.S. 313 (1971); 1B *Moore, Federal Practice* ¶0.411-.412, 0.441[3] (2d ed. 1974). Thus, indirect purchasers at one level in the chain are not estopped from contending that an overcharge was passed on to them even if someone at another level in the chain has already recovered for the same overcharge. Nor could the first purchaser be estopped by the fact that indirect purchasers have collected for an alleged pass-on.*

The Seventh Circuit acknowledged that under its opinion in this case both immediate purchasers and subsequent purchasers could recover damages from the defendants. The Court stated, however, that "according standing to ultimate purchasers need not result in double recovery because appropriate means can be found to apportion any damages that might be assessed." (Cert. Pet. App. 8.) The Court did not discuss what these appropriate means might be. Moreover, since *Hanover* denies defendants even the

*The court in *Carnivale Bag* realized that collateral estoppel offered no protection against multiple recoveries. 395 F.Supp. at 292 n. 8.

opportunity to defend against the first purchaser by asserting a pass-on and thereby allows the first purchaser to recover the full amount of any overcharge, it is difficult to perceive what is left to apportion. The Seventh Circuit's basic, unstated premise—that the first purchaser is not entitled to recover the full overcharge—is flatly at odds with *Hanover*, since reducing or eliminating the recovery of the first purchaser means recognizing pass-on as a total or partial defense. Thus, the Seventh Circuit has attempted to overrule *Hanover*.

Putting aside the issue of whether subjecting defendants to multiple recoveries (trebled) for the same overcharge violates due process,* such a result is patently unfair to the defendants. Either *Hanover* should be applied to preclude suits by indirect purchasers for the overcharge, or *Hanover* should be abrogated so that defendants may raise the defense of a pass-on against the first purchaser and others in the chain of distribution.

IV.

THIS COURT SHOULD CONTINUE TO APPLY THE POLICY AND RESULT OF HANOVER.

It is imperative that this Court set forth the policy which is to govern this important issue of antitrust law and resolve the pass-on matter once and for all. The multiple recovery problem makes the present situation untenable. Defendants should not be precluded from defending against the first purchaser while at the same time being subject to suit by indirect purchasers. Realistically, there are two choices: either *Hanover* should be overruled, all indirect purchasers should be allowed to prove allegedly

* See *Western Union Co.* v. *Pennsylvania*, 368 U.S. 71 (1961).

passed-on overcharges, and defendants should be able to defend against everyone including the first purchaser on the basis of a pass-on; or the rule in *Hanover* should continue to stand, which (subject to the cost-plus exception) would allow the first purchaser to recover the full overcharge, deprive defendants of the pass-on defense, and preclude recovery by indirect purchasers. Petitioners submit that the better choice is the latter one—continued application of *Hanover.**

This Court decided *Hanover* based upon the very real and exceedingly difficult, indeed "insurmountable," evidentiary problems involved in proving a pass-on. The Court noted that proof of facts in the real economic world, rather than theoretical economic principles, is necessary to establish injury and damage. A host of factors determine or have an effect upon pricing decisions, and after the fact, it is virtually impossible to reconstruct what a given price would have been had any one factor been different. The Court stated that a pass-on would not be proved even if "the buyer raised his price in response to, and in the amount of, the overcharge. . . ." 392 U.S. at 493.

> "The mere fact that a price rise followed an unlawful cost increase does not show that the sufferer of the cost increase was undamaged. His customers may have been ripe for his price rise. . . ." 392 U.S. at 493 n. 9.

The instant case presents a factual situation that is not even as good as the one just discussed which the Court rejected in *Hanover.* Here there is no evidence that the masonry contractors raised their prices in the exact amount of the alleged overcharge or that the general contractors then did the same. The fluctuating factors affecting con-

* See generally discussion in *Handler* and *Blechman, supra,* 85 Yale L. J. at 638-49.

struction costs, as well as the mental processes of the contractors in deciding prices, would have to be explored and proved to a jury, not just once but for each contractor in the chain of distribution and for each building project. There are over 700 plaintiffs in this case. If each plaintiff had only two to three projects, that is 1400 to 2100 separate cases. If proving just one pass-on is inherently impossible, a trial at which 1400 or more pass-ons are at issue would quickly become an insoluble morass.*

The common fault of those lower courts which, since *Hanover,* have considered that indirect purchasers could prove injury and damage absent a cost-plus situation is that they ignore the evidentiary problems that loomed so large in this Court's analysis in *Hanover.*** But if, as this Court said in *Hanover* (392 U.S. at 493), the problems of proving that an overcharge was passed on are normally insuperable for the defendant, they are equally prodigious for the remote plaintiffs in the chain of distribution. Not one of these courts has come to grips with the proof problems and found that this Court was wrong, *i.e.*, that the

* The extreme difficulties of proving a pass-on are further illustrated in those situations where the concrete block is an insignificant part of the building project. For example, consider the Lake County Nursing Home project. (A. 235.) The total cost was $4,936,450; the masonry contract was $594,540; and the concrete block was $23,566. Thus, the block was only 3.9% of the cost of the masonry contract and a mere 0.47% of the cost of the total project. It is hard to believe that an alleged overcharge for an item which was less than 1% of the project cost affected the cost of the project. *Philadelphia Housing Authority* v. *American Radiator & Standard Sanitary Corp.,* 50 F.R.D. 13, 26 (E.D. Pa. 1970).

** See *e.g., Western Liquid Asphalt* where the court "assumed" that indirect purchasers could prove injury and damage. 487 F.2d at 197 n. 5.

proof problems were not insurmountable. Instead, they have forced the parties to continue costly litigation which in the end will have been for naught since the evidentiary problems will still be there and these indirect purchasers will not be able to meet their burden of proof.

Antitrust litigation is well known for being complex, protracted and expensive, both for the litigants and the federal courts. It will become even more so if the pass-on issue is interjected into these suits because that "would often require additional long and complicated proceedings involving massive evidence and complicated theories." 392 U.S. at 493. Enormous amounts of judicial energy would be consumed in any attempt to ascertain where each portion of an alleged overcharge came to rest in a distribution chain. As early as 1918, this Court commented on "the endlessness and futility of the effort to follow every transaction to its ultimate result." *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 534 (1918). As the instant case—involving the claims of remote purchasers of buildings rather than concrete block, the product allegedly subject to price fixing—graphically illustrates, tracing an overcharge "might be an accountants' paradise, but it would be a court's purgatory." *Denver* v. *American Oil Co.*, 53 F.R.D. 620, 637 (D. Colo. 1971). Any urge to determine the complete economic consequences of an alleged overcharge must be balanced against the monumental undertaking which would be required and the inevitable uncertainty of the results.

This Court clearly indicated in *Hanover* that it did not want the federal judiciary expending its precious and limited resources on such a futile task. Petitioners submit that this Court struck the proper balance in *Hanover* in allowing the first purchaser to recover the full amount of any overcharge, and only allowing indirect purchasers to

recover if they fit the cost-plus exception.* That result harmonizes the dual public interests of enforcing the antitrust laws and rationally using our judicial resources.

CONCLUSION

For all of the foregoing reasons, petitioners request that this Court reverse the Seventh Circuit's judgment and hold that summary judgment was proper against the plaintiff-indirect purchasers.

Respectfully submitted,

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* This Court and lower courts have concluded "that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 263 n. 14 (1972).

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In the

Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, et al.,
Petitioners,

vs

STATE OF ILLINOIS, et al.,
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, et al.,
Petitioners,

vs

STATE OF ILLINOIS, et al.,
Respondents.

BRIEF FOR RESPONDENTS

QUESTION PRESENTED

The question raised in this case is whether the State of Illinois and its public agencies have standing to sue, as a matter of law, for damages that can be shown to have resulted from a conspiracy by defendants to raise and maintain the prices of concrete block, even if plaintiffs have not purchased concrete block directly from the defendants.

COUNTER-STATEMENT OF THE CASE

In April 1973 the United States indicted and filed a companion civil action against eleven manufacturers of concrete block used in building construction, charging

conspiratorial price fixing in the sale of such concrete block in the Greater Chicago Area, in violation of Section 1 of the Sherman Act (15 U.S.C. §1). Pleas of *nolo contendere* were accepted in the criminal case and a consent decree entered in the civil action.

At the same time private treble damage actions were filed on behalf of (a) masonry contractors, (b) general contractors, (c) private builders, and (d) the State of Illinois and its political subdivisions. All of these actions, except the State of Illinois action, were settled by the defendants with the payment of agreed upon sums of money.

The complaint filed by the State of Illinois and various local governmental entities ("plaintiffs") alleges that petitioners ("defendants") conspired "to raise, fix and stabilize the price of concrete block in the Greater Chicago Area" (Joint App. 11), that plaintiffs indirectly purchased substantial quantities of concrete block from defendants and that:

> By reason of defendants' illegal conduct, such plaintiffs were compelled to pay and have paid substantially higher prices for such concrete blocks than they would have paid had defendants' combination and conspiracy not existed or occurred. (Joint App. 12).

The Seventh Circuit summarized the factual allegations by the State of Illinois as follows:

> Plaintiffs assert that the defendants sold large quantities of concrete block to masonry and general contractors for incorporation in public buildings and structures. Most of the building project contracts were awarded pursuant to competitive bidding based on plans and specifications setting forth the amount

> and type of concrete block required. The bids submitted included the cost of the concrete block purchased from the manufacturer or masonry contractor. Thus the plaintiffs were not the first purchasers of the concrete block although they alleged that the cost of the product was passed on to them. *State of Illinois* v. *Ampress Brick Co.*, 536 F.2d 1163, 1164 (7th Cir. 1976).

Defendants moved for summary judgment on the ground that the State of Illinois and its public agencies were indirect purchasers of concrete block and, as such, lacked standing to recover damages for the overcharges that they were forced to pay.[1] This motion was unsupported by any evidentiary material with regard to the specific allegation that the State of Illinois and its public agencies had been forced to pay excessive prices as a result of defendants' illegal conduct. Thus, for purposes of their motion, defendants admitted that the State of Illinois could prove that the price-fixing conspiracy caused financial damages to all public agencies that purchased concrete block.

The District Court characterized the State of Illinois and its public agencies as "ultimate consumers" and concluded that "their injuries are too remote and consequential to provide *legal standing* to sue against the alleged antitrust violator." 67 F.R.D. at 468. (Emphasis added). On appeal, the Seventh Circuit reversed, holding that "plaintiffs here have alleged an injury in fact and are within the target area of the Sherman and Clayton Acts." 536 F.2d at 1167.

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[1] The defendants referred the District Court to interrogatory answers by the State of Illinois, which did nothing more than illustrate the conceded fact that the plaintiffs were indirect purchasers.

Despite the lack of any evidentiary support, defendants have presented, at length, their version of the facts with respect to the purchase and resale of concrete block by contractors, contending that "complex and independent pricing decisions were made," that the price of concrete block sold to the State of Illinois and its public agencies has no relation to the prices illegally fixed by defendants, and that proof of damages would involve insurmountable difficulties (P.Br. 5, 14). Quite to the contrary, as more fully discussed in argument, there is a direct and readily proved relationship between the overcharges on concrete block and the damages suffered by plaintiffs. The State of Illinois intends to present evidence regarding the methods that contractors use to compute their bids for public construction projects, which will establish that contractors charge plaintiffs the full cost of concrete block, plus a variable markup for overhead and profit. A jury would not require any complex economic analysis to conclude that the full amounts of the illegal overcharges were passed on to the State of Illinois and its public agencies in connection with every building they constructed during the conspiratorial period.

SUMMARY OF ARGUMENT

The complaint filed by the State of Illinois in this case charges a price-fixing conspiracy among the manufacturers of concrete block, which conspiracy operated to raise illegally the price of concrete block purchased for construction of public buildings. The concrete block was purchased through contractors who added a percentage markup to the excessive price set by the manufacturers.

The federal courts have long recognized the standing of public agencies to sue manufacturers under Section 4 of the Clayton Act for antitrust violations that inflate

the prices of materials sold through wholesalers or contractors. It has been repeatedly held that standing does not turn on the relationship of the claimant to the price-fixer, or whether there is privity of contract between plaintiff and defendant. In numerous reported cases, states and their political subdivisions have recovered substantial damages for price-fixing conspiracies in the construction field that involved products such as plumbing fixtures, builders hardware, gypsum wallboard, structural steel, brass mill tubing, steel conduit pipe, and liquid asphalt. These cases involved circumstances identical to the present case.

This Court held in ***Hanover Shoe, Inc.*** v. ***United Shoe Machinery Corp.***, 392 U.S. 481 (1968), that defendant could not attempt to show that plaintiff passed on the inflated cost it incurred to lease machinery by raising the prices of shoes it manufactured. That decision was premised upon an unwavering commitment to effective private antitrust enforcement. The rejection of the "passing-on defense" in the circumstances of *Hanover Shoe* did not disturb—either expressly or by implication—the well-settled law that indirect purchasers may sue manufacturers for damages caused by illegally fixed prices on products sold through contractors and other middlemen.

The experience in a broad range of antitrust cases shows that there is a direct and readily proved relationship between illegal overcharges by defendants and the price ultimately paid by the State of Illinois and its public agencies. The masonry and general contractors are nothing more than conduits between defendants and plaintiffs. The contractor incorporates his material cost for concrete block, then adds a percentage markup for

overhead and profit. Competition and other factors only affect the amount of markup that the contractor puts in his material cost.

The State of Illinois and its public agencies were the actual victims of defendants' price-fixing conspiracy. Concern about possible difficulties of proof cannot justify absolute denial of their clear statutory remedy. The allegations in this case raise factual issues that should be resolved by the jury.

ARGUMENT

I. THE WEIGHT OF AUTHORITY SUPPORTS THE RIGHT OF INDIRECT PURCHASERS TO RECOVER PROVABLE DAMAGES.

A. The plain words of Section 4 of the Clayton Act confer standing upon the State of Illinois.

Section 4 of the Clayton Act, 15 U.S.C. §15, provides:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee.

The statute makes no distinction between damages suffered by direct or indirect purchasers.

It is well settled that standing to sue under Section 4 does not turn on the relationship of the claimant to the price-fixer. As stressed by this Court in *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948):

> The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.

This Court has held, in the price discrimination context, that a plaintiff may recover damages "regardless of the

'level' in the chain of distribution on which the injury occurs. . . . If there is sufficient evidence in the record to support an inference of causation, the ultimate conclusion as to what the evidence proves is for the jury." *Perkins* v. *Standard Oil Co.*, 395 U.S. 642, 648 (1969).

The courts of appeals in almost every circuit have rejected the notion that there must be privity between plaintiff and defendant in antitrust cases.[2] *South Carolina Council of Milk Producers, Inc.* v. *Newton*, 360 F.2d 414, 417-419 (4th Cir.), *cert. denied*, 385 U.S. 934 (1966), succinctly expresses this doctrine:

> Section 4 does not in its terms limit relief to persons in a direct contractual or competitive status with the persons whose conduct allegedly violates the proscriptions of the Sherman Act. . . . [T]he cause of action is not dependent upon a relationship, contractual or otherwise, between the claimant and the offender, so long as the injury is a proximate result of the misdoing.

Attempts to impose additional restrictions on the standing of plaintiffs to sue under the antitrust statutes have consistently been rejected by the Supreme Court as repugnant to the unequivocal language of the statute and to the expressed belief of Congress "that private antitrust litigation is one of the surest weapons for effective enforcement of the antitrust laws." *Minnesota Mining & Mfg. Co.* v. *New Jersey Wood Finishing Co.*, 381 U.S.

[2] *E.g., Karseal Corp.* v. *Richfield Oil Corp.*, 221 F.2d 358 (9th Cir. 1955); *Dailey* v. *Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967); *Clark Oil Co.* v. *Phillips Petroleum Co.*, 148 F.2d 580 (8th Cir.), *cert. denied*, 326 U.S. 734 (1945); *Malamud* v. *Sinclair Oil Co.*, 521 F.2d 1142, 1151-1152 (6th Cir. 1975).

311, 318 (1965). Thus in *Radovich* v. *National Football League*, 352 U.S. 445, 454 (1957), the Court said:

> In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws.

In the language of *Mandeville Island Farms*, the State of Illinois and its public agencies were the intended and actual "victims" of defendants' conspiracy to inflate the prices of concrete block.[3] The Clayton Act clearly confers standing upon such "persons" to recover the overcharges paid as a result of the higher prices illegally established by defendants.

B. Pre-Hanover Shoe decisions permitted recovery of damages by indirect purchasers in factual settings identical to this case.

Prior to the decision in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), the federal courts consistently ruled that indirect purchasers had standing to sue and could recover damages for illegal

[3] The Seventh Circuit concluded that the State of Illinois was within the "zone of interest" to be protected by statute. *State of Illinois* v. *Ampress Brick Co.*, 536 F.2d 1163, 1164-1165 (1976). An impartial commentator has pointedly noted in "*Mangano* and Ultimate-Consumer Standing: The Misuse of the *Hanover* Doctrine," 72 *Colum. L. Rev.* 394, 413 (1972):

> [I]t is a curious result to suggest that a large manufacturer, who normally produces his goods with the intention and expectation that they will be distributed throughout several market areas, cannot foresee that his illegal price-fixing conduct will affect parties remote from his immediate business contacts.

overcharges on products sold through contractors and middlemen. These principles developed at the same time that courts were holding that defendants could not assert the pass-on defense to escape liability to direct purchasers.[4]

A leading decision, *Armco Steel Corp.* v. *North Dakota*, 376 F.2d 206 (8th Cir. 1967), affirmed damages awarded by the jury to North Dakota for the same kind of indirect purchases involved in this case. North Dakota had brought suit against Armco for conspiring with three local fabricators to fix the prices of corrugated metal culverts. The culverts were sold to contractors who installed them in state highway construction projects. The jury found that North Dakota had sustained actual damages of $258,355, as a result of the price-fixing conspiracy. Because North Dakota was an indirect purchaser, Armco "argued that the use of the conspiratorial list prices in quotation to contractors for use as an element in bidding on highway-construction projects could not occasion any injury to the State, but only to the contractors." The Eighth Circuit unanimously rejected this contention as unrealistic, stressing that the evidence showed that North

[4] For instance, Judge Boldt upheld the right of indirect purchasers to sue in *State of Washington* v. *General Electric Co.*, 246 F.Supp 960, 962 (W.D. Wash. 1965). Just a year earlier, Judge Boldt rejected the pass-on defense urged to defeat damage claims for price-fixing in *Public Utility District No. 1 of Chelan County, Washington* v. *General Electric Co.*, 230 F.Supp. 744 (W.D. Wash. 1964). Other decisions, even though rejecting the pass-on defense, explicitly recognized that indirect purchasers have a cause of action for antitrust violations. *E.g., Ohio Valley Electric Corp.* v. *General Electric Co.*, 244 F. Supp. 914, 951 (S.D.N.Y. 1965) (Feinberg, J.).

Dakota, the ultimate purchaser, had in fact suffered damages from the overcharges. 376 F.2d at 210.

Armco Steel is part of an unbroken line of cases upholding the right of indirect purchasers, especially public agencies, to recover damages for antitrust violations. Thus, *Missouri* v. *Stupp Brothers Bridge & Iron Co.*, 248 F.Supp. 169, 170 (W.D. Mo. 1965), held that Missouri could seek damages for indirect purchases of structural steel. The structural steel "affected by [the] conspiracy was purchased by prime contractors and subcontractors for use in the construction of new steel bridges which were in each instance themselves part of and integrated into a larger highway project." Relying upon the statutory language and its underlying policy, the court concluded in *Stupp Brothers* that it could "not read into Section 4 of the Clayton Act a requirement of privity" and that indirect purchasers should be entitled to sue for "whatever injury they may be able to prove." 248 F.Supp. at 174, 175.

Only a year before *Hanover Shoe,* Chief Judge Pence held in *State of Washington* v. *American Pipe & Construction Co.*, 274 F.Supp. 961, 962 (W.D. Wash. 1967), that Washington had standing to sue for injuries sustained "as a result of price fixing by the manufacturers of concrete and steel conduit pipe." Just as in this case, the State of Washington purchased the pipe from a general contractor as part of a total project, rather than from the manufacturer:

> General contractors in bidding for the right to perform a project, of course include a pipe quotation in the bid, and, if the successful bidder, independently purchased pipe and "resold" it to plaintiffs as part of

> the completed job. . . . Normally the contractors would but incorporate defendant's quotations in their bids, and purchase the pipe only when awarded a contract. 274 F. Supp. at 963.

On these facts, *American Pipe* rejected the argument that the conspiracy spent itself on the contractors so that any injury to plaintiffs was "too inconsequential and remote to support a cause of action." 274 F.Supp. at 965.

C. Hanover Shoe did not change existing law that allowed recovery of antitrust damages by indirect purchasers.

In *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), United claimed that Hanover suffered no legally cognizable injury because the overcharge that Hanover paid for United's machinery was passed on to Hanover's customers for shoes. The Supreme Court rejected this claimed defense for two interrelated reasons: (a) recognition of the defense would substantially reduce the effectiveness of private antitrust enforcement because the "ultimate customers . . . the buyers of single pairs of shoes, would have only a tiny stake in a lawsuit" and might not assert their claims; and (b) the consequent inquiry into the underlying economic considerations necessary to establish the pass-on defense would so unduly complicate the litigation process as to undermine the efficacy of the private enforcement mechanism. 392 U.S. at 494.

The holding in *Hanover Shoe* simply concerned the proper scope of the "passing-on defense," not the question whether indirect purchasers may bring suit to prove that they suffered injury by having to pay inflated prices.

It did not disturb the well-settled law, as set forth in contemporaneous opinions by lower federal courts, that indirect purchasers could sue for illegal overcharges on products that defendants sold through contractors and other middlemen. As stressed in *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589, 595 (N.D. Ill. 1973), the Supreme Court:

> nowhere specifically states that Hanover Shoe had standing *because* it was in "privity" with United Shoe or that privity is a requirement of standing in private antitrust cases. In fact, this court has searched in vain for any discussion of the question of standing in the *Hanover Shoe* opinion. If the Court there had intended to establish such a rule, it clearly would have said something about the recent and substantial body of authority which had reached a contrary conclusion and permitted suits under §4 of the Clayton Act by those not in "privity" with the alleged antitrust violator. [citations omitted].

II. THE RATIONALE OF HANOVER SHOE SUPPORTS THE RIGHT OF INDIRECT PURCHASERS TO RECOVER PROVABLE DAMAGES.

Recent decisions in the Second and Ninth Circuits, as well as the courts below, have unequivocally rejected defendants' argument that *Hanover Shoe* should be construed to restrict the standing of indirect purchasers. (P.Br. 8-13). As put by the Seventh Circuit:

> No subsequent decision of [the Supreme] Court has confined the treble damage remedy to direct consumers. The sweeping language of the statute and the policy encouraging private enforcement of the antitrust laws persuade us that if plaintiffs can prove a violation which resulted in an injury to them, they ought to recover. 536 F.2d at 1165.

This result is compelled by the plain meaning of *Hanover Shoe,* the policy reasons for its rejection of the pass-on defense, and the economic realities with regard to who actually suffered damages.

A. Hanover Shoe cannot be taken to have somehow deprived indirect purchasers of their right to recover damages for price-fixing of products that are sold through contractors and other middlemen.

Federal courts since *Hanover Shoe* have had no difficulty with treble damage actions brought by governmental plaintiffs in circumstances identical to this case. The well-reasoned decision *In re Master Key Antitrust Litigation,* 1973-2 Trade Cas. ¶74,680 (D.Conn. 1973), strongly reaffirmed the standing of the State of Illinois to recover overcharges on hardware indirectly purchased through contractors for public buildings:

> [D]efendants' invocation of *Hanover,* which *rejected* a proposed pass-on defense in order to ensure that those who violated the antitrust laws did not escape liability through a multiplication of legal complexity, strikes a discordant note. . . . The attempt to transform a rejection of a defense because it unduly hampers antitrust enforcement into a reason for a complete refusal to entertain the claims of a certain class of plaintiffs seems an ingenious attempt to turn the decision and its underlying rationale on its head.
>
> • • •
>
> Assuming, as must be done on summary judgment, that these defendants have violated the antitrust laws, they should not be permitted to escape the penalties Congress has mandated. To do so would fly in the face of the Supreme Court's manifest concern for "the effectiveness of the private action as a vital means of enforcing the antitrust policy of the United States." *Id.,* at 94,978-94,979.

Shortly thereafter, the Ninth Circuit in *In re Western Liquid Asphalt Cases,* 487 F.2d 191 (9th Cir. 1973), *cert. denied sub nom., Standard Oil Co.* v. *Alaska,* 415 U.S. 919 (1974), upheld the right of several states to sue for illegal overcharges on asphalt that they indirectly purchased through contractors for highway construction, pointing out:

> Our case, then, involves "passing on," not as a defense, but as a theory of recovery in the nature of an offense. Here we are directly confronted with the policy favoring the allowance of recovery to appellants who can prove both the occurrence of an antitrust violation and that they each thereby incurred substantial damage. . . .
>
> In our case, this policy favors permitting appellants to demonstrate injury by reason of any passed-on overcharge. 487 F.2d at 197-198.

The Second Circuit has held rejection of the "passing-on defense" in *Hanover Shoe* to be perfectly consistent with recovery of damages by indirect purchasers. *In re Master Key Antitrust Litigation,* 528 F.2d 5, 12 n.11 (2d Cir. 1975); *State of West Virginia* v. *Chas. Pfizer & Co. (Tetracycline),* 324 F.Supp. 710 (S.D.N.Y. 1970), *aff'd,* 440 F.2d 1079, 1087 (2d Cir.), *cert. denied,* 404 U.S. 871 (1971). The settlement approved by the trial court in *Tetracycline* provided for refunds of overcharges to all purchasers in the chain of distribution. Certain retailers and wholesalers, however, opposed allocation of any money to ultimate consumers on the ground that *Hanover Shoe* deprived indirect purchasers of legal stand-

ing to recover their damages. The District Court rejected this argument, and distinguished *Hanover Shoe* on its facts:

> United charged Hanover more for shoe machinery than would have been charged except for the antitrust violation. The machinery was then used in making shoes from Hanover designs, using all the necessary materials (leather, thread, cloth, etc.) and applying the labor and skills of the Hanover organization. The use of the machinery was by Hanover, which was in the position of a consumer or end user of the machinery. The machinery was not resold, as were the antibiotics in suit. 314 F.Supp. at 746.

The District Court concluded that the ultimate consumer suffered the actual damage since the middlemen resold the antibiotics in the form obtained from the manufacturers, adding their markup to the artificially inflated cost. 314 F.Supp. at 745.

The Second Circuit affirmed the settlement approval and reconciled recovery of overcharges by indirect purchasers with *Hanover Shoe* in the following language:

> First, the passing-on doctrine is not here being used as a defense to permit the defendants to escape liability, but rather as an attempt to award damages, insofar as is possible, to those who ultimately paid higher prices as a result of the collusive pricing, and to avoid giving a windfall gain to those who rather clearly were not injured. Secondly, to permit the use of the doctrine in the present circumstances will not act to limit or frustrate private treble-damage claims, but will, if anything, do the opposite. 440 F.2d at 1088.

The recent decision in *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 266 (1972), rebuts any suggestion that

Hanover Shoe was meant to bar recovery by indirect purchasers. *Hawaii* v. *Standard Oil Co.* held that public agencies and ultimate consumers have a right under the Clayton Act to recover damages for injury to their "commercial interests or enterprises." 405 U.S. at 264. Moreover, this Court recognized that states may sue as class representatives to recover financial damages suffered by ultimate "consumers" due to antitrust violations. While it disallowed a *parens patriae* action for alleged harm to the general economy, this Court noted that a state could bring a Rule 23 "class action on behalf of some or all of its consumer citizens" and commended the use of class actions to "enhance the efficacy of private actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture." 405 U.S. at 266.

The Court of Appeals for the District of Columbia has construed *Hawaii* v. *Standard Oil Co.* as authority in support of class actions against drug manufacturers by states representing individuals who purchased antibiotic drugs indirectly from retail drug stores. *State of Illinois* v. *Bristol-Myers Co.*, 470 F.2d 1278, n.4 (D.C. Cir. 1972). *See also Boshes* v. *General Motors Corp.*, 59 F.R.D. at 589.

B. The Third Circuit's decision in Mangano distorts the holding and rationale of Hanover Shoe.

Defendants rely upon a pretrial ruling in *Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971), *aff'g*, 50 F.R.D. 13 (E.D.Pa. 1970) (*Plumbing Fixtures Cases*), for their argument that the State of Illinois and its public entities are too remote to sue for damages under the antitrust laws

(P.Br. 12-14).[5] But the *Mangano* decision has been recognized as exceedingly poor authority for a doctrine that would deny redress to indirect purchasers who can prove they were damaged. The first ground for the *Mangano* decision was the refusal of plaintiffs to answer interrogatories. Curiously, the issue whether the *Hanover Shoe* doctrine should affect the rights of indirect purchasers was conceded by the *Mangano* plaintiffs. 50 F.R.D. at 29. In its short opinion, the Third Circuit carefully limited its holding to the "circumstances" created by the refusal of plaintiffs to respond to discovery requests. 438 F.2d at 1188.

The inconsistent positions taken by the Third Circuit itself in the *Plumbing Fixtures Cases* illustrates the possible evil consequences of the *Mangano* ruling. Defendants were able to cut off their exposure to indirect purchasers and, at the same time, avoid substantial liability by making cheap settlements with their initial purchasers. In *Ace Heating & Plumbing Co.* v. *Crane Co.*, 453 F.2d 30 (3d Cir. 1971), the Third Circuit affirmed the trial court's approval of the settlement in the *Plumbing Fixtures Cases* over the objection that not enough money

[5] Petitioners also harken back to the decision in *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531 (1918), for the argument that the federal courts should not undertake to determine who, in fact, suffered damage from antitrust price-fixing. (P.Br. 22). There are two reasons why *Darnell-Taenzer* is not relevant. First, *Darnell-Taenzer* was decided when privity was still required under tort law; it did not enshrine privity as a prerequisite to antitrust suits. Second, *Darnell-Taenzer* was a suit brought under the Interstate Commerce Act (49 U.S.C. §1), not the antitrust laws. It thus involved the problem of administrative agency regulation, a consideration not present in this case.

had been allocated to contractors. Despite the prior decision in *Mangano* that indirect purchasers had no standing to recover damages, the Third Circuit saw no reason for the initial purchasers to recover either, stating:

> [T]he claims of this class [contractors] were minimized by the probability that overcharges made upon them were passed on to their customers. 453 F.2d at 34.

As summarized in *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 at p. 94,980:

> Thus, the defendants in the plumbing fixtures cases managed neatly to have it both ways. They escaped any liability to the ultimate purchasers, and then got off with reduced damages on the theory that the parties who had suffered legally cognizable injury had passed on their losses to those same ultimate purchasers. No result could more effectively undercut the important congressional policy embodied in the Clayton Act, which includes awards of treble damages as its primary weapon of enforcement. Dismissal of the governmental plaintiffs at this stage of the present litigation would provide the stage for the same acrobatics so dextrously performed by the *Mangano* defendants.

Having already made settlements with contractors and private builders, defendants in this litigation seek to escape meaningful liability in the same fashion as the defendants in the *Plumbing Fixtures Cases*.

III. THE STATE OF ILLINOIS CAN PROVE, IN FACT, THAT ITS PUBLIC AGENCIES WERE THE PERSONS ACTUALLY DAMAGED BY PAYING THE INCREASED PRICES THAT RESULTED FROM DEFENDANTS' CONSPIRACY.

Defendants argue that the State of Illinois should not be permitted to sue for the damages it allegedly

incurred because "proof of injury and monetary damage" would be extremely difficult. (P.Br. 15, 20). Besides its complete lack of factual support, this argument rests upon faulty economic theory, ignores the procedures developed by federal courts for trial of complex antitrust cases, and underestimates the common sense of juries. The State of Illinois and public agencies purchased enormous amounts of concrete block for school, hospital and other construction projects; they were the persons that most clearly suffered financial loss as a result of defendants' antitrust violations.

A. There is a direct and readily proved relationship between defendants' prices for concrete block and the price paid by the public agencies for this material used in building construction.

General contractors follow a standard procedure to calculate bids to public agencies.[6] Prior to competitive bidding, the contractor ascertains the cost of concrete block required, as well as all other necessary materials, and gets quotations on jobs to be subcontracted, which may include masonry work. Based on the lowest quotation he receives, the contractor includes the full cost of the concrete block, or masonry subcontract, in his bid as a known cost. The contractor totals his material, labor, and subcontract costs, then adds a variable percentage for overhead and profit. Consequently, if the defendants were to charge a lower price for the concrete block, the masonry contractor's quotation to the public agency would be reduced by the same amount

[6] The masonry contractor operates in the same manner as the general contractor, just adding one step to the chain of distribution.

(as well as the percentage markup applied to that amount). The masonry and general contractors are nothing more than conduits between defendants and plaintiffs. The contractors absorb none of the illegal overcharges, but recover it completely (and more) from the State of Illinois and its public agencies.[7]

The cost of concrete block is "known" in advance of bidding; any increase in this cost has a direct impact on the State of Illinois. The other elements considered by a contractor in computing a bid include his work force, overhead, risk and competition. While the final bid will depend on the contractor's estimate of such factors, the basic fact remains that the contractor's bid directly includes the total cost to him of the concrete block. The only independent pricing decision made by the contractor is how much markup should be put on the cost for concrete block. Competition among contractors does not affect the price of concrete block; it is irrelevant, therefore, to the amount that plaintiffs were damaged by the illegally inflated price of concrete block. The price paid by the State of Illinois for concrete block is excessive no matter what profit the contractor makes on a particular project since each contractor's bid carries forward the higher price he was forced to pay for the concrete block. If the cost of materials is inflated, this inflation directly registers in the prices charged by the masonry and general contractor regardless of other factors considered in setting their bids..

[7] Some contractors calculate labor costs by reference, in part, to their known material cost. In such a situation, an overcharge on concrete block would aggrevate the damages suffered by the governmental plaintiffs.

B. The economic basis for rejection of the "pass-on defense" in Hanover Shoe has no application to recovery for purchases of price-fixed concrete block by plaintiffs.

The difference between a retail purchaser of shoes and the public agencies who paid contractors for concrete block precludes reliance on *Hanover Shoe* as authority that the contractors who worked for such public agencies are the only parties having a claim for damages against defendants.

Hanover Shoe involved a situation where Hanover leased machines to produce shoes; the subject of the suit was a capital expenditure by the shoe manufacturer. When Hanover priced its shoes, it had to consider competition from other domestic and foreign shoe manufacturers, who operated with different overhead and different labor costs. No matter how accurate Hanover's cost accounting, it could not set its prices for shoes strictly as a function of its costs for leasing the machines that produced the shoes, or any other capital item. The prices for shoes depended on competitive conditions of supply and demand. Consequently, there was no direct correlation between the cost of the machines and Hanover's price for shoes—much less the retail price at which ultimate consumers purchased the shoes. In such circumstances, the Supreme Court properly refused to let United Shoe muddy the record with esoteric inquiry into Hanover's profit margins and hypothetical pricing changes.[8]

[8] The Court noted in *Hanover Shoe* that assertion of the "passing-on defense" would involve "nearly insuperable difficulty of proof" that the cost of leasing the machinery affected plaintiff's prices and margin of profit. 392 U.S. 493.

In contrast, concrete block is a material that a contractor purchases for resale to plaintiffs. How much markup the contractor puts on the cost of materials does not affect the fact that the State of Illinois and its public agencies ultimately pay the higher prices set by defendants. Defendants completely misconceive the issue by arguing that "there is no evidence that the masonry contractors raised their prices in the exact amount of the alleged overcharge. . . ." (P.Br. 20). Such proof is not necessary, since the pass-on issue in this litigation does not concern profit margins. Damages result from the fact that the contractor includes the full price of the concrete block in his bid; he does not purchase the concrete block until he is awarded the contract. The amount of his markup for profit and overhead simply increases the basic damages caused by defendants' conspiracy.

The Supreme Court did not consider or discuss the economic consequences of the purchase and resale of the price-fixed product. Accordingly, *Hanover Shoe* cannot be taken as laying down an immutable rule that there is no economic connection between a contractor's material costs and his price to the owner for the materials. The Supreme Court cited a "cost-plus" contract as one example of a situation in which proof of the "passing-on defense" would be feasible. 392 U.S. at 494. The reference to this exception must be viewed in *Hanover Shoe's* factual context. The contractors here include the full cost of concrete block in their bids. This represents another pricing arrangement in which it would be not only feasible, but relatively easy, for plaintiffs to trace the illegal overcharges by defendants.[9]

[9] Several federal decisions since *Hanover Shoe* have treated the "passing-on defense" as "simply one of the

C. The issue whether the contractors passed on the illegal overcharges to plaintiffs is properly a question of fact that should be resolved by the jury.

The State of Illinois has alleged that its public agencies were injured by reason of defendants' illegal price-fixing. On a motion for summary judgment, these allegations must be taken as true unless contraverted by evidence submitted under oath, and the inferences from these facts must be viewed in the light most favorable to the State of Illinois. *Poller* v. *Columbia Broadcasting Systems, Inc.*, 368 U.S. 464 (1962); *United States* v. *Diebold*, 369 U.S. 654 (1962). Under Rule 56, defendants have the burden to submit evidence which establishes that no genuine issue of material fact exists. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144 (1970); *Stubbs* v. *United States*, 428 F.2d 885 (9th Cir. 1970); 6 Moore's *Federal Practice* ¶56.22[2] at p. 1344 (2d Ed. 1976).[10] Defendants did not support their motion for summary judgment by affidavits or sworn testimony, but simply contended that this action should be dismissed because the State of Illinois was an indirect purchaser of concrete block. The failure of

[9] (Continued)
factors to be considered in determining damages in an antitrust action under the federal statutes." *Lee's Prescription Shops, Inc.* v. *Chas. Pfizer & Co.*, 1970 Trade Cas. ¶73,180 (S.D.N.Y. 1970); *Standard Industries, Inc.* v. *Mobil Oil Corp.*, 1973 Trade Cas. ¶74,404 at p. 93,847, n. 1 (10th Cir. 1972); *Henry Obron* v. *Union Camp Corp.*, 1973-1 Trade Cas. ¶74,541 (6th Cir. 1973), *aff'g*, 1972 Trade Cas. ¶73,909 (E.D. Mich. 1972)).

[10] It is certainly not the proper function of a bare summary judgment motion "to force" plaintiffs to submit evidence (P.Br. 14), especially since the District Court stayed all discovery pending resolution of defendants' motion for summary judgment (Joint App. 21).

defendants to submit any supporting affidavits or other evidence may be readily explained. Reference to the facts would belie their speculation that it would be too difficult for indirect purchasers to prove damages.

The parallel experience in *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 (D.Conn. 1973), thoroughly refutes the theoretical contentions by defendants. Just as here, defendants in the *Master Key Antitrust Litigation*, manufacturers of builders hardware, asserted that the State of Illinois and other governmental plaintiffs had no standing to recover damages, because they "did not purchase the hardware directly from defendants or their distributors and would" be unable to prove their damages. *Id.*, at pp. 94,977-94,978.

The defendants in the *Master Key Antitrust Litigation* supported their motion for summary judgment with affidavits from their employees, hardware dealers and general contractors that it would be too complicated to trace the illegal overcharges to the ultimate purchasers.[11] The governmental plaintiffs responded with affidavits from several contractors showing that:

> [O]nce a bid is received from a builders' hardware distributor, that sum is included as a single line entry on the contractor's own estimates, independent

[11] Defendants in the *Master Key Antitrust Litigation* stressed that builders hardware represented less than 1% of total construction cost, just as defendants here assert that concrete block is "an insignificant part" of some building projects (P.Br. 21). But as shown by defendants' example, 0.47% of total construction cost for the Lake County Nursing Home amounted to $23,566. This is a substantial figure, especially when multiplied by a thousand or more projects on which defendants fixed the prices of concrete block at excessive levels.

of unit prices or quantity estimates, and, along with his own percentage markup, is included *in toto* in his bid on a project. The affidavit of Willard F. Mueller, a member of the Faculty of Law at the University of Wisconsin as well as Professor of Economics there, reviewed the contractors' affidavits and concluded:

> Based on the preceding, we may infer that any overcharges paid for finished hardware components by general contractors are fully reflected in their bids on buildings for the State of Illinois. Moreover, because the percentage markup applied to costs by general contractors in calculating their bids are unaffected by the price of finished hardware, the full finished hardware overcharge is passed on to the State of Illinois plus the contractor's percentage markup on the overcharge. In other words, if this percentage markup were 10 percent, for each $1 that the conspiracy increases prices to general contractors, the State of Illinois would pay an extra $1.10.
>
> Additionally, because finished hardware components are essential parts of a building and represent a relatively small part of the total cost of a building, the demand for these components is very inelastic, i.e., the volume of purchases are not affected by price. When demand is very inelastic, increases in costs due to an overcharge will be passed on in full. . . . *Id.*, at p. 94,981.

Judge Blumenfeld, therefore, concluded that there was a "genuine issue of material fact over whether contractors use something like a 'cost-plus' arrangement with respect to builders' hardware so that the governmental plaintiffs could readily prove that they, and not the contractors, have suffered the overcharges. . . ." *Id.*, at p. 94,871. The same factual dispute exists in this case; it can only

be resolved at trial, where plaintiffs would almost certainly prevail.

The *Master Key Antitrust Litigation* went to trial before a jury in Hartford, Connecticut, on September 21, 1976. Not only did the State of Illinois introduce uncontradicted testimony that overcharges were passed on by general contractors as a matter of ordinary procedure, but defendants' arguments collapsed upon cross-examination of their witnesses. Defendants called a previous affiant, Roscoe Smith, President of W.J. Megin, a construction company in Naugatuck, Connecticut, as a witness on their behalf. Mr. Smith testified, in pertinent part:

> Q. Now, in fact, if there were an overcharge on the hardware as a result of a conspiracy among the manufacturers of the hardware, wouldn't that overcharge have been borne by the owner rather than the contractor?
> A. If it were charged on the bid that we got and we used, it would be passed on to the owner, yes sir.
> Q. That is, if it was a cost to you you would pass that overcharge on to the owner?
> A. Whatever cost we had, we would pass over to the owner, yes sir.
>
> Transcript of trial proceedings in *In re Master Key Antitrust Litigation,* M.D.L. Docket No. 45 (D.Conn.), October 21, 1976, pp. 2782-2783.[12]

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[12] Mr. Smith corroborated the testimony given by contractors on behalf of the governmental plaintiffs. For instance, Douglas Madsen, President of Orville E. Madsen & Son, a general contractor located in Madison, Wisconsin, testified:

> Q. Now, if a hardware dealer's price to you is excessive, either as a result of violation of the

The State of Illinois intends to present evidence in this case, through contractors and economists, that the full overcharge in the sale of concrete block by defendants, plus the contractor's markup, is borne by the public agencies that have constructed buildings. Defendants should meet this evidence before the jury, rather than arguing the "facts" as a basis for a legal doctrine denying standing to the State of Illinois. In this regard, defendants argue, quite irrelevantly, that most public agencies did not identify the cost of concrete block for the construction projects listed in their answers to questionnaires circulated by counsel. (P.Br. 5).[13] But the evidence necessary to identify sales of concrete block and trace overcharges in such sales may be derived from business records maintained by defendants, as well as records of contractors and architects. *Cf., State of Illinois* v. *Harper & Row Publishers, Inc.*, 301 F.Supp. 484, 491 (N.D.Ill. 1969).

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[12] (Continued)

law or for any reason, would that excessive amount of his price be passed on to the owner of the building?

A. Yes, it would.

Transcript of trial proceedings in *In re Master Key Antitrust Litigation*, M.D.L. Docket No. 45 (D.Conn.), October 8, 1976, p. 1885.

[13] These questionnaires were not intended to present plaintiffs' damage proof; they simply sought to identify public construction projects that involved the use of concrete block. They were preliminary in nature, and necessarily would be followed by normal pretrial discovery requiring defendants to set forth sales of concrete block for the construction projects involved in this litigation.

D. The experience in other cases shows that the supposed difficulties of proof are exaggerated.

There is no credible support for the blanket assertion by defendants that proof of injury by public agencies will pose insurmountable problems and unduly burden judicial resources. (P.Br. 15, 20-21). The federal courts have shown the capacity to entertain and resolve the factual issues bearing upon whether illegal overcharges were passed on to indirect purchasers.[14] For instance, in *Southern General Builders, Inc.* v. *Maule Industries, Inc.*, 1973 Trade Cas. ¶74,484 (S.D. Fla. 1972), indirect purchasers were able to prove their financial injury as a matter of fact. Following trial on the issue of liability, the jury found that defendants had conspired together to fix or stabilize the price of concrete and that the conspiracy caused damage to the plaintiffs, who had purchased buildings through contractors. Upon consideration of *Hanover Shoe,* the trial court denied defendant's motion for judgment *n.o.v.*, holding that plaintiffs had standing to recover damages even in the absence of a "cost-plus arrangement." At. p. 94,152. A petition to appeal was denied by the Fifth Circuit in *Lehigh Portland Cement Co.* v. *City of North Bay Village,* Misc. No. 2364 (April 5, 1972).

On facts close to this case, the jury found that North Dakota had suffered damages in *Armco Steel Corp.* v. *State of North Dakota,* 376 F.2d 206 (8th Cir. 1967).

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[14] It has been conceded by one prominent defense counsel that to prove overcharges were passed on "would generally be no more difficult or complex than the plaintiff's task of proving the overcharge in the first instance." Pollock, "Automatic Treble Damages and the Passing-on Defense: The *Hanover Shoe* Decision," 13 *Antitrust Bulletin* 1183, 1210 (1968).

The damage award reflected illegal overcharges paid by North Dakota on metal culverts for highways purchased through general contractors. Upon close review of the evidence, the Eighth Circuit affirmed the judgment entered on the jury verdict, holding:

> With the same price quotation for the product being made to all contractors bidding on a highway project; with this quotation being used by the contractors as their cost basis for the product in computing their project bid; . . . there could hardly be much question that such prices, in their margin of artificiality from lack of competitive play, operated directly to injure the State in increased cost of its highway projects. 376 F.2d at 210.

The Eighth Circuit concluded that the argument now advanced by defendants:

> ignores the realities, which the evidence entitled the jury to find existed, that the price quotations made by a supplier to a contractor as to a particular project constituted in the trade a commitment to the contractor to supply him with such quantity of the products as was required by the plans and specifications, upon the quoted basis, should he get the job; . . . and that it accordingly was the uniform practice of the contractors to use the list-price quotations as their cost basis for the products in making up their bids on a project. 376 F.2d at 210.

In short, proof of injury and damages by indirect purchasers has been established in jury trials without undue complexities and has resulted in substantial recoveries by public agencies.

E. The supposed "difficulties" in proving damages should not affect the standing of indirect purchasers to secure redress for their damages.

This Court's stress on problems of proof in *Hanover Shoe* reflected an underlying policy to ensure the efficacy of private antitrust enforcement. Assertion of the "passing-on defense" in *Hanover Shoe* would have created serious obstacles for the only party able to prosecute the defendant. But in this case—where the indirect purchasers have asserted claims to recover their actual damages and are in a position to prove those damages—judicial economy cannot justify the absolute denial of relief. Note, *"Mangano* and Ultimate Consumer Standing: The Misuse of the *Hanover* Doctrine," 72 *Colum. L. Rev.* at 410. In this connection, it should be noted that the states and other political subdivisions have played the leading role in private antitrust enforcement, frequently without the assistance of federal investigations. *E.g., Cast Iron Pipe Antitrust Cases,* C.A. No. 71-516 (N.D.Ala.), and *Gypsum Wallboard Litigation,* No. 46414 (N.D.Cal.).

Justice White predicted in *Hanover Shoe* that defendants would seize upon the "passing-on defense" to burden and impede the prosecution of treble-damage actions. This unwillingness to allow a defense based on inconclusive and misleading economic inquiry accords with prior federal decisions that have refused to let defendants introduce evidence of profit or loss in price-fixing cases. For instance, in *Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co.,* 40 F.R.D. 96 (N.D. Ill. 1966), Chief Judge Robson held that defendant's figures for "actual costs, profits or losses" were not admissible. *See also United States* v. *Alcoa,* 148 F.2d 416, 427 (2d Cir. 1945); *American Crystal Sugar Co.* v. *Mandeville*

Island Farms, 195 F.2d 622, 626 (9th Cir.), *cert. denied,* 343 U.S. 957 (1952).

Moreover, the Supreme Court has repeatedly held that the plaintiff's burden of proof should be eased rather than let a violator of the antitrust laws escape liability because it is difficult to calculate the precise amount of damages he caused. *E.g., Storey Parchment Co.* v. *Patterson Parchment Paper Co.,* 282 U.S. 555, 564 (1931). In *Bigelow* v. *RKO Radio Pictures,* 327 U.S. 251, 264-265 (1946), this Court ruled:

> But the jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly . . . Any other rule would enable the wrongdoer to profit by his wrongdoing at the expenses of his victim. . . .
>
> The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created.

Justice White stressed in *Zenith Radio Corp.* v. *Hazeltine Research, Inc.,* 395 U.S. 100, 123 (1969):

> Trial and appellate courts alike must also observe the practical limits of the burden of proof which may be demanded of a treble-damage plaintiff . . . ; damage issues in these cases are rarely susceptible of the kind of concrete, detailed proof of injury which is available in other contexts.

With regard to proof of damages in a price-fixing case, the Ninth Circuit noted that "direct proof of payment is not required" and facts raising reasonable inferences, based upon appropriate market data should suffice to go to the jury on these questions. *In re Western Liquid Asphalt Cases,* 487 F.2d at 200-201.

Defendants seek to confuse the issue of standing by complaining that proof of injury would require separate analysis of the hundreds of transactions in which the State of Illinois and its public agencies purchased price-fixed block. (P.Br. 20-21). The Second Circuit rejected the identical argument in *In re Master Key Antitrust Litigation,* 528 F.2d 5, 12, n.11 (2d Cir. 1975), with the following reasoning:

> If the appellees [the governmental plaintiffs] establish at the trial for liability that the defendants engaged in an unlawful national conspiracy which had the effect of stabilizing prices above competitive levels, and further establish that the appellees were consumers of that product, we would think that the jury could reasonably conclude that appellants' conduct caused injury to each appellee. *See In re Ampicillin Antitrust Litigation,* 55 F.R.D. 269, 275-76 (D.D.C. 1972); *Illinois* v. *Harper & Row Publishers, Inc.,* 301 F.Supp. 484 (N.D.Ill. 1969). The amount of such injury could then be computed at a separate trial for damages, and appropriate substratification of classes could be utilized to facilitate that determination.

IV. RECOVERY OF DAMAGES BY THE STATE OF ILLINOIS POSES NO THREATS OF MULTIPLE LIABILITY TO DEFENDANTS.

Defendants argue that if the State of Illinois were to recover the damages it can prove to have suffered, that would create the "serious problem of multiple recoveries." (P.Br. 17-19). The record in this case, and the experience in similar cases, show this fear to be unfounded.

This case involved suits under Rule 23 by purchasers at all levels of distribution; *i.e.,* masonry and general contractors, private builder-owners, and the public agen-

cies represented by the State of Illinois. Consequently, defendants had the opportunity to litigate the question of their liability with all potential damage claimants in one proceeding. Instead, defendants chose to settle wth the respective classes of contractors and private builder-owners, on a basis which the State of Illinois considered inadequate.[15] Thus defendants have eliminated the possibility of any subsequent suit by contractors or other intermediate purchasers. There is simply no chance in this litigation that defendants will be subjected to multiple liability.

On the other hand, intermediate purchasers frequently do not file suit. Contractors or other direct purchasers may be unwilling to antagonize important suppliers because of business relationships and possible retaliation. Moreover, the violation may be profitable to the direct buyers, who regularly mark up and pass on overcharges. It is unrealistic to expect any substantial number of direct purchasers to initiate a treble damage suit under such circumstances. Whereas public bodies can sue without fear of counterclaim or other forms of retaliation, many antitrust cases are never brought because the injured firm is acutely aware that its own business practices may not stand close scrutiny under the antitrust laws. The Ninth Circuit noted in *In re Western Liquid Asphalt* that "most of the contractors . . . have not come

[15] Upon objection by the State of Illinois, defendants stated to the District Court that the settlements "shall have no effect whatsoever on, and be without prejudice to the State of Illinois case" and that defendants would not argue that the claims of the public agencies in the State of Illinois case have been "in any way diminished" because defendants settled with contractors who purchased and resold concrete block (Joint App. 61).

forward to challenge these alleged violations" and reasoned that "it is understandable that contractors might not sue" because of their alleged dependence on defendants for asphalt and "the possibility that they earned a percentage profit on the overcharges." 487 F.2d at 198. The spectre of multiple recoveries is "nothing more than . . . a hypothetical question concerning the allocation of provable injury, not that of the standing necessary to maintain a cause of action." *State of Washington* v. *American Pipe & Construction Co.*, 274 F.Supp. 961, 965 (W.D. Wash. 1967). The possibility of subsequent suits by contractors was characterized as "largely illusory" in *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶74,680 at p. 94,979. In fact, no such actions were filed.

In those situations where defendants are initially sued only by claimants at one level of distribution, the short four-year statute of limitations and procedures available in the federal courts to consolidate related lawsuits minimize the danger of inconsistent judgments or the assessment of damages against defendants more than once for the same illegal acts.

With respect to the alleged problem of double liability, *Boshes* v. *General Motors Corp.* reasoned:

> [C]utting off the rights of such a substantial number of potentially injured persons merely because such a "possibility" exists is far too drastic a measure to take. . . . [I]f the statute of limitations does not obviate the possibility of double liability, the doctrine of collateral estoppel probably would [footnote omitted]. More importantly, the procedural resources available to both the court and the parties are sufficient to avoid such an inequitable result. 59 F.R.D. at 596.

These procedures include transfer and consolidation of multidistrict cases under 28 U.S.C. §1407, as well as 28 U.S.C. §1404. Since defendants know the identity of their immediate purchasers, they can invoke statutory interpleader, 28 U.S.C. §1335, to protect themselves against being sued later by purchasers at different levels of the distribution chain.

The Ninth Circuit outlined procedures in *In re Western Liquid Asphalt* that may be used to apportion damages between "an intermediary and an ultimate consumer":

> The amount of the overcharge is not necessarily the total amount of harm to plaintiffs. Purchasers may also have been damaged by being forced to turn to substitute goods, or to discontinue purchasing the price-fixed product. The essence of conspiracy is that the conspirators believe they will recover more from the illegal overcharge than they will lose from diminished sales. . . . Thus, in passing-on cases, the intermediary should recover the amount of the overcharge that was not passed on, if the proof shows that the ultimate consumers did not pay it all, and any lost profits resulting from increased costs. The ultimate purchasers should obtain the remainder of the overcharge, and any other damages proximately caused. 487 F.2d at 200-201.

If an illegal overcharge is proved and the intermediaries were not harmed by it, then the ultimate purchasers should recover not only the overcharges by defendants, but the percentage markup put on the overcharge by intermediaries. This is simply the risk that a company takes when it violates the law.

CONCLUSION

Wherefore, the decision of the Court of Appeals should be affirmed, the case remanded to the District Court and the State of Illinois given the opportunity to prove that the impact of defendants' illegal overcharges fell upon its public agencies.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. and NORTHFIELD BLOCK CO.,

Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

REPLY BRIEF FOR PETITIONERS

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Petitioners,

vs.

STATE OF ILLINOIS, et al.,

Respondents.

REPLY BRIEF FOR PETITIONERS

I.

CHARACTERIZATION OF THE PASS-ON ISSUE AS ONE OF STANDING TO SUE IS ERRONEOUS.

Plaintiffs and the *amici curiae* assert that the issue in this case is standing. They cite authority about the expansive scope of the antitrust laws and the "target area" test, and urge that plaintiffs and other indirect purchasers, all of whom are incorrectly assumed to be injured parties, should be allowed to recover their damages. These

arguments, however, miss the point, for the issue in this case is not standing, but rather proof of injury to these parties. In other words, were these indirect purchasers actually injured? Were they victims of the alleged price-fixing conspiracy? Was the alleged overcharge or part of it, in fact, passed on to them?

In *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968), this Court dealt with the pass-on issue and considered what evidence would be sufficient, as a matter of law, to establish a pass-on. In doing so, the Court necessarily rejected the unfounded conjecture (relied upon by plaintiffs and the Seventh Circuit) that overcharges invariably are passed on to consumers. Instead, the proper assumption is that the first purchaser is injured by the overcharge. For indirect purchasers to recover, they must establish *by proof* that a pass-on actually occurred. In *Hanover,* after considering the evidence adduced at trial, including testimony regarding principles of economics in pricing situations, this Court concluded that, because of insuperable evidentiary difficulties, a pass-on could be proved only in pre-existing cost-plus or similar pricing arrangements.

Seeking to apply *Hanover* to the instant case, defendants did not file a motion on the pleadings raising the standing question, *i.e.,* whether plaintiffs are proper persons to file suit. Instead, defendants conducted discovery and then moved for summary judgment on an undisputed factual record which showed that plaintiffs did not fit the cost-plus exception of *Hanover* and thus, as a matter of law, could not prove that they, rather than the direct purchasers, were injured.* Consequently, the issue before

* Plaintiffs' statement (Resp. Br. p. 3.) that defendants admitted that plaintiffs could prove the alleged pass-on and resulting injury is preposterous. Defendants never conceded that. Indeed, a central element of defendants' summary judgment motion has been that plaintiffs cannot prove a pass-on and injury as a matter of law.

the District Court was the substantive merits of plaintiffs' case, the fact of injury or pass-on, and not merely the threshhold issue of standing.

Along with the standing arguments, plaintiffs and the *amici curiae* claim that defendants are asking this Court to adopt a privity requirement for antitrust cases. This is incorrect. Defendants merely agree with this Court's analysis in *Hanover* that, except in cost-plus or similar situations, direct purchasers can prove injury from an overcharge and indirect purchasers cannot. Defendants do not claim that an indirect purchaser who can prove that a pre-existing cost-plus contract or similar pricing arrangement existed will not be able to prove injury and recover. The ultimate result in each case depends not upon privity, *i.e.,* the existence of a contractual relationship or direct dealings with the price-fixer, but rather upon whether the circumstances of the pricing decisions permit proof of injury by subsequent persons in the chain of distribution.

II.

BASED ON THE EVIDENCE IN THE RECORD SHOWING THE ABSENCE OF ANY GENUINE ISSUE OF MATERIAL FACT, SUMMARY JUDGMENT WAS PROPER.

Plaintiffs and the *amici curiae* assert that summary judgment should not have been granted because defendants purportedly failed to base their motion on any evidence, and because there were disputed issues of material fact. These assertions are totally incorrect.

This suit was commenced on September 20, 1973. (A. 1.) On November 13, 1973, defendants filed their first set of interrogatories seeking to determine (1) whether plain-

tiffs bought concrete block or buildings of which concrete block was just one component, and (2) for those who bought buildings, whether the block in the buildings had been the subject of pre-existing cost-plus contracts or similar pricing arrangements. (R. 44.) Answers to the interrogatories, in the form of answers to a questionnaire sent out by plaintiffs' counsel, were filed with the District Court. (A. 211 *et seq.*) Part I of the questionnaire sought information about public building projects. (A. 217.) Question I.C specifically requested pricing information, *i.e.*, whether the project was competitively bid, negotiated, cost-plus, or some other arrangement.* (A. 217.) Part II of the questionnaire sought information regarding direct purchases of concrete block. (A. 234.)

The questionnaire answers established that only four public entities bought concrete block; the rest bought buildings. Thus, the assertions that plaintiffs bought concrete block are conclusively incorrect. The questionnaire answers also established that none of the building projects involved cost-plus contracts or any similar pricing arrangements. Instead, the projects were competitively bid. Based upon these facts, defendants moved for summary judgment.

The summary judgment motion was filed on January 6, 1975, fifteen months after the suit was commenced. Plaintiffs filed a brief in opposition to the motion on

* In addition to pricing information, the questionnaires asked for the cost of the total project, cost of the masonry subcontract, cost of the concrete block, identity of the general contractors and masonry subcontractors who were awarded the projects, and other information. (A. 217.) Thus, plaintiffs' statement (Resp. Br. p. 3.) that the answers provided no facts other than that they were indirect purchasers is untrue.

February 4, 1975, but did not submit any affidavits or other evidentiary material.* Plaintiffs did not seek additional time to obtain affidavits or take discovery.** Nor did they utilize the procedure outlined in Fed. R. Civ. Pro. 56(f) to explain why facts essential to their opposition to the motion were unobtainable.

Now plaintiffs seek to overturn the District Court's judgment and to excuse their failure to submit evidence in opposition to the motion on the ground that defendants did not show that there was no genuine issue of material fact. *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144 (1970). But plaintiffs' argument fails because defendants clearly did establish that there were no genuine issues of material fact. The evidence supporting the motion consisted of

*Since defendants had supported their motion with evidence, plaintiffs were obligated to present sufficient evidence to raise a disputed issue of material fact. Federal Rule of Civil Procedure 56(e) provides in part:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

**It has been suggested that plaintiffs were precluded from taking necessary discovery. (Resp. Br. p. 24 n. 10.) That claim is false. Counsel for both sides agreed upon a stay of discovery. A stipulation requesting the stay, signed by plaintiffs' counsel, was filed on February 4, 1975, the same day on which plaintiffs filed their papers in opposition to the summary judgment motion. (R. 100.) On March 5, 1975, Plaintiffs' counsel advised the court that the summary judgment motion was fully briefed and "ripe for decision." (A. 203, 210.)

plaintiffs' own admissions from their interrogatory answers, nothing else.

Consequently, there is no issue as to whether plaintiffs directly bought concrete block. They admitted that they did not; they bought buildings. Similarly, there is no issue as to whether plaintiffs' purchases of building involved cost-plus contracts or similar pricing arrangements.* (See answers to Question I.C.; A. 217-90.) They admitted that they did not; the building contracts resulted from competitive bidding. (*Id.*) Since plaintiffs were indirect purchasers who did not fit the cost-plus exception, defendants were entitled to summary judgment as a matter of law under *Hanover*.

III.

PLAINTIFFS' NEW EVIDENCE SHOULD NOT BE CONSIDERED.

Having failed to present evidence to the District Court as required by Fed. R. Civ. Pr. 56(e), plaintiffs now urge this Court to consider new evidence. (Resp. Br. pp. 25-27.). This additional evidence should be rejected by this Court for several reasons.

First: evidence will not be heard for the first time on appeal. The evidentiary record is made and closed at the District Court level. Plaintiffs had every opportunity to submit evidence and chose not to do so either in opposition to the summary judgment motion or pursuant to a motion for reconsideration. They are not entitled to sit

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* The State of California, as *amicus curiae*, contends that the instant case does involve pre-existing cost-plus pricing. (Br. Cal. pp. 5-6, 12-16.) Since plaintiffs' admissions are to the contrary, that contention and the argument based upon it should be ignored.

silently in the District Court, lose, and then offer evidence on appeal in order to be heard again.

Second: the evidence, which is dehors the record, is not even admissible in this case. Plaintiffs are offering trial testimony and affidavits from the *Master Key* litigation. (Resp. Br. pp. 25-27.) That "evidence" is irrelevant and immaterial to this case. Furthermore, defendants were not parties to that litigation. Their counsel did not examine the witnesses or even have an opportunity to review the complete record for contrary "evidence." Presenting this material to this Court is improper and violates basic notions of fairness.

Third: the gist of the new "evidence" is that contractors merely collect their given costs and add on a percentage for profit. If plaintiffs are now attempting to assert that contractors actually practice cost-plus pricing, that evidence is diametrically opposed to plaintiffs' own interrogatory answers, which stated that the contracts at issue in this case were competitively bid and were not awarded on a cost-plus basis. Plaintiffs should not be allowed to contradict or change their interrogatory answers at this stage. If plaintiffs had wanted to amend their answers, that should have been done in the District Court.

IV.

PLAINTIFFS' NEW EVIDENCE STILL DOES NOT PROVE A PASS-ON.

Assuming *arguendo* that plaintiffs had properly submitted their new evidence to the District Court, they still would not prevail under *Hanover*. As this Court stated, pricing decisions are complex, and normally are not susceptible to being reconstructed after the fact. *Hanover Shoe, Inc.* v. *United States Machinery Corp.*, 392 U.S. 481

at 492 (1968). Only in extremely unusual circumstances, such as pre-existing cost-plus contracts, can one *prove* that an overcharge was passed on by the first purchaser (and then by others in the chain of distribution) when independent, competitive pricing decisions are involved. The failure of proof hinges upon the existence of independent pricing decisions in unrestrained markets, and this is why plaintiffs' case fails here.

Stripped of conclusory verbiage, plaintiffs' evidence would be as follows. Concrete block passes through two levels of independent pricing decisions—the masonry contractors and the general contractors.* The masonry contractor collects the costs of all materials (including concrete block, the price of which includes the alleged overcharge) and labor, and then adds a markup for overhead and profit. The resulting total is the subbid presented to the general contractor. The general contractor, in turn, collects all subbids for a particular project, adds his material and labor costs, and then adds a markup to arrive at his bid on the project. (Resp. Br. pp. 20-21.) Plaintiffs admit that the markup applied by the contractors to their material and labor costs for profit and overhead is variable, and that competition among subcontractors and general contractors affects the amount of that markup. (Resp. Br. pp. 4, 6, 21.)

Based on these facts, plaintiffs argue that, since the full cost of the block is contained in the masonry subcontract bid and since the masonry subbid is reflected in full in the general contractor's bid, the overcharge has been passed on in full to the purchaser of the building. In other

* Plaintiffs have never alleged that the masonry or general contractors were involved in the alleged conspiracy with the block manufacturers regarding the price of block. (A. 6.)

words, the plaintiffs contend that if the block had cost less, the masonry contract would have been less and the general contract would have been less. That conclusion, however, is clearly incorrect. The facts which plaintiffs offer do not establish the key fact—that the direct purchaser (here the masonry contractor) did not in fact and in law absorb the overcharge.

Assume that block cost $1.10 per hundred and that the overcharge was 10¢ of that amount. Clearly the masonry contractor was injured, since he paid the overcharge. If there had been no overcharge, the block would have cost $1.00 per hundred. The next question is whether the masonry contractor passed on the overcharge. In the absence of pre-existing cost-plus contracts, the answer under *Hanover* is that a pass-on cannot be shown.

Here plaintiffs in their interrogatory answers have admitted that the contracts are not of the cost-plus variety. Thus, the masonry contractor charges a price for the masonry subcontract, not separate prices for the bits and pieces. In other words, there is not one price for block, a separate price for mortar, and then a guaranteed, fixed amount for profit and overhead. The masonry contractor is submitting a price for masonry work, *e.g.*, constructed walls, done in place at a specific site.

Since the construction contracts are awarded pursuant to competitive bidding, the masonry contractor, once he has collected the costs for material and labor, must attempt to submit a bid that is low enough to be accepted. He must consider his competition and his own situation. How much does he need a particular job? Is he in a boom time for construction, when he is fairly busy with his equipment fully deployed so that project X is unimportant to him, or is it a slack time for construction so that he needs projects because his machinery is idle or just be-

cause he needs to earn some money? Is the project a big job, a plum, or a small, inconsequential job? Is the project near to the contractor's base of operations or far away involving large transportation costs? How aggressive are his competitors and what will it take to underbid them?

All of these competitive factors, along with the costs of materials and labor, necessarily affect the masonry contractor's pricing decision for the subcontract, *i.e.*, how much of a markup can he charge and still get the contract. If block costs $1.10, he may conclude that he can only mark the job up 5%, whereas he might have been able to mark the job up 8% if block had been only $1.00. If the masonry contractor reduces his markup because block costs more, he is injured by the overcharge and there has been no pass-on. *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 at 489 (1968). Even if he does not reduce his markup because block is overpriced, he is still injured and no pass-on is shown because he would have made more profit if the block had cost less. *Id.*

Obviously, the very same inherently impossible proof problems as existed in *Hanover* are present here and preclude the showing of a pass-on either at the masonry contractor level or the general contractor level. Moreover, plaintiffs would have to show a pass-on at both levels to establish that they paid the overcharge for block.*

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* Plaintiffs seek to distinguish *Hanover* on the ground that the price-fixed item there was a capital item used to produce other products and not like concrete block which supposedly goes through a chain of distribution to a consumer. (Resp. Br. pp. 22-23.) Aside from the fact that here concrete block is not merely resold as a separate product through a chain of distribution to plaintiffs as consumers, the "capital item" distinction presents no meaningful difference. In either case, the effect of competitive conditions makes any assumptions as to "normal" pricing decisions impossible.

Plaintiffs argue that they will present expert economists to testify about inelastic demand and the resulting necessity of a pass-on of the overcharge for block. Suffice it to say that this Court in *Hanover* rejected precisely the same evidence. In *Hanover*, the defendant maintained that there could be no injury:

> ". . . where the overcharge is imposed equally on all of a buyer's competitors and where the demand for the buyer's product is so inelastic that the buyer and his competitors could all increase their prices by the amount of the cost increase without suffering a consequent decline in sales." 392 U.S. at 492.

This Court stated that "[w]e are not impressed with the argument that sound laws of economics require recognizing" the existence of a pass-on under those circumstances. *Id.* It was in response to this exact claim that this Court concluded that the "insuperable difficulty" of recreating pricing decisions "in the real economic world rather than an economist's hypothetical model" precluded consideration of the evidence. *Id.* at 493.

In contrast to the foregoing, it is possible to prove a pass-on when pre-existing cost-plus contracts are at issue. The simple reason is that, in those cases, the vagaries of competitive pricing are effectively eliminated. For example, if a manufacturer has a cost-plus contract to supply shoes, he is insulated from changes in costs and competition. Assume the contract provides for the price of shoes to be the costs plus $2. Then regardless of the cost of the materials and labor, the manufacturer always makes $2 per pair of shoes—never more, never less. He does not have to factor the costs into his pricing decision. He never absorbs increased costs; he never makes more if costs go down.

Plaintiffs and the courts deal with, or, more accurately, seek to get around *Hanover* by ignoring it or refusing to

apply it. For instance, they assert that Hanover merely precludes the pass-on defense, but does not preclude use of pass-on as an offense, *i.e.*, a predicate for indirect purchasers' claims for an overcharge. *E.g., In re Master Key Antitrust Litigation,* 1973-2 Trade Cas. ¶74,680 at 94,978 (D. Conn. 1973). In practice, this approach results in an absurd standard of proof on the pass-on issue. Defendants are precluded, as a matter of law, from establishing that direct and indirect purchasers in the chain of distribution passed on overcharges, while at the same time plaintiff-indirect purchasers can make out *prima facie* cases of liability (*i.e.*, a pass-on) with extremely minimal proof. In this regard, the Second Circuit stated:

> "If the appellees [the governmental plaintiffs] establish at the trial for liability that the defendants engaged in an unlawful national conspiracy which had the effect of stabilizing prices above competitive levels, and further establish that the appellees were consumers of that product, we would think that the jury could reasonably conclude that appellants' conduct caused injury to each appellee." *In re Master Key Antitrust Litigation,* 528 F.2d 5, 12 n. 11 (2d Cir. 1975).

The Second Circuit thus makes no allowance whatsoever for the full absorption of the overcharge at the level of the first purchaser. Without any proof, the Second Circuit assumes that a pass-on did occur, when that is the very issue to be decided.

There is nothing in *Hanover* which supports the proposition that a pass-on is not a defense but that it can be used as an offense in antitrust cases. This Court did not say that it was only impossible for defendants, but not plaintiffs, to prove a pass-on. Instead, this Court indicated that it did not want the pass-on issue to be litigated

throughout the chain of distribution.* 392 U.S. at 494. Plaintiffs' position—that it is easy for indirect purchasers to show a pass-on but that proof by defendants of a pass-on somehow involves "inconclusive and misleading economic inquiry" (Resp. Br. p. 31.)—is untenable; it defies logic. Adoption of such a contradictory standard of proof on this issue would seriously undermine a fair, evenhanded system of justice and might well deny antitrust defendants due process and equal protection of the laws.**

Furthermore, the rationale behind this double standard does not withstand analysis. First, it is stated that the

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* The United States as *amicus curiae* seeks to explain *Hanover* on the ground that there only the direct purchaser (the shoe manufacturer) had a significant enough interest in the overcharge to sue to enforce the antitrust laws. That is incorrect. The shoe manufacturer sold its shoes to only four customers: J. C. Penney, Montgomery Ward, the United States government and Sheppard & Myers, Inc. *Hanover Shoe, Inc.* v. *United Shoe Machinery Corporation,* 245 F.Supp. 258, 264 (M.D.Pa. 1965). Certainly, these four had sufficient interest and resources to sue.

** Plaintiffs and the *amici curiae* note (Resp. Br. p. 32; Br. Cal. p. 11; Br. Ala. *et al.* pp. 26-27.) that once the fact of damage is been proved plaintiffs' burden in proving the *amount* of damage is reduced if the nature of the violation itself makes ascertainment of the precise amount of damage uncertain. *Bigelow* v. *RKO Radio Pictures,* 327 U.S. 251, 264-265 (1946); *Storey Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555, 564 (1931); *Terrell* v. *Household Goods Carriers' Bureau,* 494 F.2d 16, 20 (5th Cir. 1974), *petition for cert. dismissed,* 419 U.S. 987 (1974). Here, however, it is not the amount of damage that is in issue. It is whether as a matter of law the first purchaser can be shown to have passed on any of the alleged overcharge. Similarly, it is not the nature of the alleged violation, but the complex nature of independent pricing decisions in a competitive market, that makes the proof of pass-on insurmountable.

indirect purchasers are the victims of the overcharges. As previously discussed, in the vast majority of cases (i.e., in the absence of pre-existing cost-plus arrangements) that is not true. Second, it is asserted that, unless indirect purchasers can sue, wrongdoers will escape liability. (Resp. Br. p. 32.) Again, that is incorrect. The direct purchasers can sue, as they did in this very case.*

Finally, plaintiffs and the *amici curiae* argue that *Perkins* v. *Standard Oil Co.*, 395 U.S. 642 (1969), is precedent for allowing recovery by indirect purchaser plaintiffs. The facts in and context of *Perkins,* however, belie this interpretation. In *Perkins,* a suit under the Robinson-Patman Act, 15 U.S.C. §13(a), defendant Standard Oil was alleged to have given discriminatorily low prices not only to certain direct competitors of the plaintiff, but also to a wholesaler which resold to the wholesaler's 60%-owned subsidiary, which again resold to its 55%-owned subsidiary Regal, which was another direct competitor of the plaintiff. Plaintiff's recovery was allowed. Thus in *Perkins,* while the discriminatory low price was "passed on" through two levels, neither level was truly independent but was effectively controlled by the level before it. The application of *Perkins* to price-fixing cases, therefore, would allow indirect purchasers to prove a pass-on only if the purchasers in the chain before them similarly lacked independence. See Handler and Blechman, *Antitrust and the Consumer Interest: The Fallacy of Parens Patriae and a Suggested New Approach,* 85 Yale L.J. 626, 645-646 n. 97 (1976).

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*Plaintiffs criticize the settlement of the direct purchasers claim as being too cheap. (Resp. Br. p. 19.) Plaintiffs views on that subject are irrelevant. What is relevant is that, after notice to the class and a hearing, the District Court approved the settlement, finding it to be fair, reasonable and adequate.

V.

THE DEVICES SUGGESTED TO SOLVE THE SERIOUS PROBLEM OF MULTIPLE RECOVERIES ARE INADEQUATE.

It has been suggested that there is no danger of multiple recoveries in this case because defendants have settled with the other claimants: the direct purchasers and the other indirect purchasers. (Resp. Br. p. 34.) To the contrary, those facts show that multiple recoveries are a real problem. Defendants were sued by the masonry contractors, the direct purchasers, who under *Hanover* had a claim for the full overcharge with no deduction for any alleged pass-on. In spite of having settled that claim, defendants are still subject to the claims of plaintiffs, who have no intention of reducing their claims by the amount which defendants paid in settlement to either the masonry contractors or the general contractors.

Several purported solutions to the multiple recovery problem are offered by plaintiffs and the *amici curiae*: interpleader, transfer under 28 U.S.C. §1404 and §1407, collateral estoppel, laches, and the statute of limitations. None of these will, in fact, solve the problem.

Defendants have already discussed the inadequacy of collateral estoppel. (Pet. Br. p. 18.)

The United States contends that the statute of limitations can effectively preclude double recovery. (Br. U.S. p. 27.) The mechanism by which this would work would require that no judgments in pending cases be entered and no settlements be made until the four year statute of limitations has run.* This, it is urged, provides protection

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* Of course, the statute may not run in four years since it can be tolled.

against subsequent claims, since they would be barred. Obviously, this solution is untenable. The law favors settlement of controversies. It would be inimical to that policy to adopt a rule which means that effective settlements cannot be made for at least four years. It is also unreasonable to defer litigating suits for four years to ensure that subsequent suits will not be filed.

Alternatively, the United States suggests that direct or indirect purchasers who file after other suits have been resolved should be barred by laches. (Br. U.S. pp. 27-28.) But, as long as the statute of limitations has not run, an antitrust claimant cannot be denied on the basis of laches. *Maricopa County* v. *American Pipe & Construction Co.*, 303 F.Supp. 77, 89 (D. Ariz. 1969), *aff'd*, 431 F.2d 1145 (9th Cir. 1970), *cert. denied*, 401 U.S. 937 (1971); *Union Carbide & Carbon Corp.* v. *Nisley*, 300 F.2d 561 (10th Cir. 1961), *petition for cert. dismissed*, 471 U.S. 801 (1973).

Consolidation and transfer will not necessarily work. In the first place, transfer under 28 U.S.C. §1407 is only for *pretrial* proceedings. In the second place, these devices depend on the discretion of individual judges as well as the development of each lawsuit. For example, if lawsuit A is filed in 1970 and is ready for trial in 1972, it is unlikely that lawsuit B filed in 1972 would be transferred and consolidated with it.

Interpleader under 28 U.S.C. §1335 also will not work. Putting aside the procedural difficulties of whether interpleader is available to a defendant and how it would be accomplished,* the proposed solution would result in an absurd situation. For example, assume that only the ma-

* Under Fed. R. Civ. Pro. 22(1) defendants cannot interplead non-parties. *Grubbs* v. *General Electric Credit Corp.*, 405 U.S. 699, 705 n. 2 (1972).

sonry contractors had sued defendants. The interpleader "solution" would require defendants, who deny that there even was a price-fixing conspiracy, to bring into the suit all of the general contractors and all purchasers of buildings for the relevant four year period. Indeed, since the State was one of the purchasers of buildings, are all of the taxpayers in Illinois to be made parties to the suit, since under plaintiffs' theory, the State may have passed on the alleged overcharge to them? Defendants are unlikely even to know everyone who would have to be brought into the suit.

Finally, putting aside the difficulties presented by each particular "solution," there is a fundamental defect to the solutions which plaintiffs and the *amici curiae* ignore. For underlying all of these proposed solutions is the premise that the overcharge is going to be fairly and correctly apportioned among all of the direct and indirect purchasers. But since the basic premise is faulty, the solutions are irrelevant. Under *Hanover*, the direct purchaser is entitled to the full overcharge. He does not have to prove that he did not pass on the overcharge in order to recover. Consequently, there is nothing to apportion among the indirect purchasers.

VI.

THIS COURT SHOULD CONTINUE TO APPLY HANOVER.

Plaintiffs and the *amici curiae* would have this Court adopt a rule that all indirect purchasers can sue defendants for and recover the same alleged pass-on (even in the absence of cost-plus or similar pricing arrangements), while at the same time precluding defendants from defending against any purchaser (direct or indirect) on the ground that the overcharge was or was not passed on. Plaintiffs and the *amici curiae* would also add to the rule

that the overcharge can be apportioned. The reasons offered by plaintiffs for their position are as follows: that the indirect purchasers are the injured parties who should be compensated, that the pass-on can be proved easily, and that allowing indirect purchasers to sue enhances the enforcement of the antitrust laws.

Defendants submit that the rule suggested by plaintiffs and the reasons behind it are unsound. First, as already discussed at length, the two *basic* premises of plaintiffs and the *amici curiae* are incorrect. The indirect purchasers normally are not the injured parties of an overcharge. They are the victims only in situations involving cost-plus or very similar pricing arrangements. Similarly, it is anything but simple to prove (as opposed to assuming) that there has been a pass-on. As previously discussed, the courts which have opted for plaintiffs' position either avoid consideration of the proof problems by labeling the issue as standing, thus putting off the day when proof of the indirect purchasers' claim is at hand, or refuse to follow the evidentiary standard for proof of a pass-on as set down in *Hanover*. Defendants submit that this Court's analysis of the issues in *Hanover* is correct.

Second, allowing indirect purchasers to maintain these suits will not enhance private enforcement of the antitrust laws. There are direct purchasers who are willing and able to sue, as evidenced by this very case where the masonry contractors sued. Indeed, eliminating the uncertainty presently existing as to whether the direct or indirect purchaser can sue will encourage the direct purchasers to sue, particularly if the rewards from those suits will be recovery of the full overcharge (trebled) rather than some small portion of the overcharge (or even none at all, if a jury chooses to believe that the overcharge was passed on). Direct purchasers will also be encouraged to

sue because the litigation will not bog down into a never-ending, exceedingly expensive endeavor to trace each overcharge, or worse, parts of overcharges, through a chain of distribution.

Defendants do not contend that their position will result in perfect justice, but then neither will plaintiffs. Defendants do believe that adoption of their position will facilitate the administration of justice and the enforcement of the antitrust laws because the people who are most likely to be the victims of overcharges will be compensated without imposing untenable burdens on our judicial resources.

CONCLUSION

The policy and result of *Hanover* (*i.e.*, that first purchasers recover for overcharges unless there are pre-existing cost-plus contracts or similar pricing arrangements, in which event indirect purchasers can recover) should be reaffirmed. The judgment of the United States Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ILLINOIS BRICK COMPANY, ET AL., PETITIONERS

v.

STATE OF ILLINOIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Comment, *Standing to Sue in Antitrust Cases: The Offensive Use of Passing-on*, 123 U. Pa. L. Rev. 976 (1975) 12
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Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Rule 15 26
S. Rep. No. 94–803, 94th Cong., 2d Sess. (1976) 8, 15
Wolfram, *The Antibiotics Class Actions*, 1976 A.B.F. Res. J. 251 .....2, 25

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTION PRESENTED

Whether the purchasers of a price-fixed product may recover under the antitrust laws for loss caused by overcharges paid by the original purchasers and passed on to them as subsequent purchasers.

INTEREST OF THE UNITED STATES

Private actions for damages pursuant to Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. 15, have served an important role, supplemental to that of public actions, in enforcing the antitrust laws. *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 262. The United States therefore has an interest in preserving the effectiveness of private actions. Moreover, Section 4A of the Clayton Act, as added, 69 Stat. 282, 15 U.S.C. 15a, gives the United States a right to recover the actual damages it suffers as a result of violations of the antitrust laws. The United States purchases substantial quantities of goods from distributors, wholesalers and

contractors that have in turn purchased goods (or parts of goods) from others. In these cases the United States stands in the same relation to any price fixer which sold to its supplier as respondents do to petitioners, and the adoption of petitioners' arguments therefore would restrict the right of the United States to recover for loss caused by overcharges passed on to it by intervening parties. Cf. *Hawaii*, *supra*, 405 U.S. at 264–265.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

In the present case petitioners manufactured concrete block and sold it to respondents through one or more intermediaries, usually construction contractors and their masonry subcontractors. For the purpose of this case we must assume, as the complaint alleged

[1] For example, the United States, which purchases drugs for use in federal hospitals and pays through Medicare and Medicaid for drugs purchased by others, is one of the plaintiffs in the antibiotic antitrust cases. It has refused a settlement offer of $14.3 million (Wolfram, *The Antibiotics Class Actions*, 1976 A.B.F. Res. J. 251, 316–317 and n. 23); the case has been through one trial (see *United States* v. *Lord*, 542 F. 2d 719 (C.A. 8)) and is awaiting another. The United States also is seeking damages as an indirect purchaser of reinforcing rods used in buildings (*United States* v. *Armco Steel Corp.*, S. D. Tex., Civ. No. 73–H–1427) and folding carton containers (*United States* v. *Alton Box Board Co.*, N. D. Ill., Civ. No. 76C–1638). If the arguments of petitioners are accepted, the prospects of recovery by the United States in these and similar cases may be substantially undermined.

(A. 10–11), that petitioners unlawfully fixed the price of this concrete block.[2]

If contractors or their subcontractors (the "direct-purchasers") sue the manufacturers, they may allege and prove several types of damages. They may seek to prove lost profits, including profits that would have been earned but for sales lost because of the need to charge higher prices to customers. Alternatively, they may attempt to recover the amount of the illegal overcharges paid. If they choose the latter theory the defendants may offer to prove that the direct purchasers suffered no injury, because they passed on the illegal overcharges to their customers. Such an offer of proof would be a "defensive" use of the passing-on theory.

Ultimate consumers or other indirect purchasers of the overpriced goods also may sue the price-fixers, alleging that the price of the goods they purchased had been increased because of the illegal overcharges to the direct purchasers. In order to prove injury, the consumers or other indirect purchasers would offer to demonstrate that all or part of the illegal overcharge was passed on by the direct purchasers. This situation, which is present in the instant case, is an "offensive" use of the passing-on theory.

Before 1968, when this Court decided *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481,

[2] In 1973 an indictment returned in the United States District Court for the Northern District of Illinois (*United States* v. *Ampress Brick Co., et al.*, No. 73 CR 312) charged petitioners with conspiring to restrain trade in violation of Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, by fixing the price of concrete block. Petitioners pleaded *nolo contendere* to that indictment.

there were two lines of authority in the lower courts dealing with passing-on problems. In defensive use cases the courts had generally rejected the defendants' offer to prove that intermediaries in the chain of distribution were uninjured because they passed on the overcharges.[3] These courts concluded that the purposes of the antitrust laws to compensate the victims of price-fixing, and to use private enforcement to deter other violations of the law, would be frustrated if defensive use of a passing-on claim were allowed. *Hanover Shoe* came to the same conclusion, relying on the same reasons.

In offensive use cases, however, the lower courts held that indirect purchasers would be allowed to prove—if they could—that they had been injured by illegal overcharges passed on to them by others in the chain of distribution.[4] These decisions rested on the same grounds as the decisions rejecting defensive use of the passing-on claim: the principle that victims of antitrust violations should recover for their losses, and the policy of promoting private enforcement of the antitrust laws.

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[3] See Annotation, 1 A.L.R. Fed. 500 (1969); see also *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481, 491–492 n. 8.

[4] See *Armco Steel Corp.* v. *North Dakota*, 376 F. 2d 206 (C.A. 8); *Washington* v. *American Pipe & Construction Co.*, 274 F. Supp. 961 (W.D. Wash.); *Washington* v. *General Electric Co.*, 246 F. Supp. 960 (W.D. Wash.); *Missouri* v. *Stupp Bros. Bridge & Iron Co.*, 248 F. Supp. 169 (W.D. Mo.). Cf. *Dailey* v. *Quality School Plan, Inc.*, 380 F. 2d 484, 487–488 (C.A. 5) (Bell, J.); *South Carolina Council of Milk Producers, Inc.* v. *Newton*, 360 F. 2d 414, 417–418 (C.A. 4), certiorari denied, 385 U.S. 934.

We submit that allowing indirect purchasers to try to prove that they have been injured by overcharges passed on to them is no less appropriate now than it was before *Hanover Shoe*. The language of Section 4 of the Clayton Act is direct: "[a]ny person" injured in his "business or property by reason of anything forbidden in the antitrust laws" is entitled to recover treble damages. The Court has emphasized that this provision should be construed sufficiently broadly to permit achievement of the goals of compensating the victims of unlawful conduct and deterring other violations of the antitrust laws.

A suit by indirect purchasers of price-fixed goods may be an important instrument in fulfilling these goals. In many circumstances the indirect purchasers bear the brunt of the injury caused by violations of the antitrust laws; unless they may maintain a suit for damages, these injuries will go unredressed. In many cases the direct purchasers may elect not to sue, or not all will sue; when this happens the deterrence Congress sought to bring about through treble damages actions will not be achieved unless indirect purchasers are allowed to prove and collect their own damages.

Nothing in *Hanover Shoe* calls for a different result. In that case the Court rejected defensive use of passing-on claims because defensive use would defeat the purpose of the antitrust laws to deter violations. In *Hanover Shoe* no indirect purchasers had sought recovery, and the only persons with a stake in the matter sufficient to justify seeking judicial relief were direct purchasers. To allow a passing-on defense in that case

would have been to allow the violator of the antitrust laws to retain the spoils of his misdeeds.

It is true that the *Hanover Shoe* Court remarked upon the practical difficulties in proving the extent of passing-on. But it is one thing to say that these difficulties should not be allowed to defeat recovery by a person who clearly paid illegal overcharges (as in *Hanover Shoe*) and quite another to say (as petitioners do) that because a plaintiff in an antitrust case will have a hard time proving his case, he should not even be allowed to try. It would be a looking-glass world if, as a result of *Hanover Shoe*, only the direct purchaser, which might well be uninjured, could recover, while the indirect purchaser who bore the ultimate loss were told that his claim that he had suffered loss is too difficult to merit judicial attention, without even an inquiry into whether it might be proved in a reasonably precise and efficient manner.

Petitioners' suggestion that *Hanover Shoe* establishes a rule that only those in privity with the price-fixers may recover damages for violations of the antitrust laws fares no better. Section 4 establishes a test of causation (any person injured "by reason of anything forbidden" may recover) and not, as petitioners contend, a test of contractual relationships. A violation of the antitrust laws may be thought of as a statutory intentional tort. Privity with the tortfeasor is not a precondition at common law to recovery for loss caused by intentional torts; indeed, the requirement of privity has been abandoned in recent decades even for negligent torts.

Petitioners also contend that allowing suit by indi-

rect purchasers will lead to double recovery. This alarmist position is not supported by the record in this case; petitioners have not established that, if respondents recover fully for their provable loss, petitioners will be required to pay more than the total loss their illegal conduct caused. Moreover, there are a number of devices by which double recovery can be averted in other cases.

Transfers and consolidation can bring the several classes of victims together in a single action, in which damages can be apportioned. Defendants concerned about multiple recovery may invoke statutory interpleader under 28 U.S.C. 1335, leaving those who claim to be victims of the unlawful conduct to contest among themselves the proper distribution of damages. Petitioners argue for a broad rule—a rule that prevents indirect purchasers from recovering whether or not the defendants are exposed to double recovery. The possibility that some defendants may be exposed to double recovery is not, however, a reason why all defendants should be immune from recovery by all indirect purchasers.

The rule for which petitioners contend would broadly cut off recovery by large groups of victims of unlawful practices, perhaps even by those who bore the brunt of the injury. The benefits of petitioners' rule—prevention of difficult problems of proof in establishing damages, and prevention of double recovery in speculative cases not presented here—do not justify allowing violators of the antitrust laws to retain the benefits of their illegal acts and insulating potential violators from what may be a powerful deterrent to misconduct.

ARGUMENT

A PERSON WHO PURCHASES GOODS THROUGH AN INTERMEDIARY MAY RECOVER DAMAGES FOR AN INCREASE IN THE PRICE OF THE GOODS CAUSED BY ILLEGAL PRICE FIXING

A. THE LANGUAGE AND POLICY OF SECTION 4 OF THE CLAYTON ACT SUPPORT DAMAGES AWARDS TO INDIRECT PURCHASERS WHO CAN PROVE LOSS

Petitioners ignore the language of Section 4 of the Clayton Act, upon which this case turns. They instead make broad arguments concerning problems of judicial administration (Pet. Br. 10–17, 19–23) and the possibility of multiple recoveries (*id.* at 17–19). It is possible that these arguments, if presented to Congress, would persuade the legislature to narrow the class of permissible plaintiffs in antitrust cases.[5] But we must take the statute and the legislative policy as we find it. Section 4, and the policies it implements, demonstrate that indirect purchasers of goods may attempt to establish that the price they paid was inflated because of illegal overcharges in violation of the antitrust laws. If they can establish this, bearing the burden of proof, they are entitled to recover treble damages for their loss.

Section 4 of the Clayton Act provides that "[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws"

[5] We doubt that Congress would be impressed by such arguments. It explicitly rejected similar arguments in enacting the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1383. See S. Rep. No. 94–803, 94th Cong., 2d Sess. 44 (1976).

may recover treble damages for his loss. The respondents are "persons" for purposes of this Section,[6] and any loss they may have suffered is loss in their "business or property."[7] Respondents thus need to establish only that they suffered loss "by reason of anything forbidden in the antitrust laws."

Whether indirect purchasers suffer injury "by reason of" overcharges to the direct purchasers, within the meaning of Section 4, depends upon an evaluation of the purposes of the treble damages recovery. The Court has indicated that Section 4 was designed to serve two vital functions: the provision of compensation to the victims of violations of the antitrust laws, and the encouragement of private suits that will deter future violations. See, *e.g.*, *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U.S. 251, 265–266 (" '[t]he constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery' for a proven invasion

[6] See *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439; *Georgia* v. *Evans*, 316 U.S. 159.

[7] States and their subdivisions satisfy the "business or property" requirement when they seek recovery for damages inflicted on them in their proprietary capacities. *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 263 n. 14, 264; *Hanover Shoe, supra*, 392 U.S. at 490. A State is in the business of providing governmental services, and overcharges that increase the price of providing these services to its residents inflict injury both in "property" (because of the increase in expense) and "business" (because of the capacity in which the State was acting). See *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390. On the other hand, a general injury to the State's economy would not be an injury to the State's "business or property." *Hawaii, supra*, 405 U.S. at 260–266.

of the plaintiff's rights"); *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 130–131; *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134; *Hanover Shoe, supra*, 392 U.S. at 494. Indeed, the Court has held that effectuating the deterrent policy of the antitrust laws is so important that damages should be awarded even when the plaintiff is "no less morally reprehensible than the defendant" with whom he conspired. *Perma Life Mufflers, supra*, 392 U.S. at 139.

Because of the importance of these goals, the Court has frequently indicated that Section 4 should be liberally construed to allow recovery. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 236, observed that "[t]he statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. * * * The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." *Radovich* v. *National Football League*, 352 U.S. 445, 454, pointed out that courts "should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in [the antitrust] laws." In *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co.*, 364 U.S. 656, 660, the Court once more indicated a willingness to interpret Section 4 broadly, writing that "to state a claim upon which relief can be granted * * *, allegations adequate to show a violation and, in a private treble damage action, that plaintiff was damaged thereby are all the law requires." [8]

This does not mean that the category of persons entitled to recover damages is limitless. The statute itself contains limits; it requires injury to "business or property," and the damage suffered by the plaintiff must come about "by reason of" a violation of the antitrust laws. The latter provision creates a requirement akin to that of "proximate cause" in the law of torts.

The defendant may not be required to answer in damages for injuries too remote from his violation of the antitrust laws. See *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251. The need to confine within reasonable bounds the class of those permitted to recover has led the courts of appeals to develop the "target area" test, which requires plaintiffs to demonstrate a sufficient relationship to the area of the economy sought to be secured against the effects of antitrust violations.[9]

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[8] See also *Perkins* v. *Standard Oil Co.*, 395 U.S. 642, a price discrimination case. The Court rejected any requirement of privity between the plaintiff and the alleged violator of the antitrust laws, concluding that a plaintiff seeking to recover damages need show only a "causal connection between the price discrimination in violation of the Act and the injury suffered. * * * If there is sufficient evidence in the record to support an inference of causation, the ultimate conclusion as to what that evidence proves is for the jury." 395 U.S. at 648.

[9] See, *e.g.*, *Karseal Corp.* v. *Richfield Oil Corp.*, 221 F. 2d 358 (C.A. 9); *Calderone Enterprises Corp.* v. *United Artists Theatre Circuit, Inc.*, 454 F. 2d 1292 (C.A. 2), certiorari denied, 406 U.S. 930; *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F. 2d 122, 129 (C.A. 9), certiorari denied *sub nom. Morgan* v. *Automobile Manufacturers Ass'n, Inc.*, 414 U.S. 1045. At least two courts have suggested that this test could be reformulated in a way still more favorable to

Under the "target area" test indirect purchasers could recover, because they can prove "*antitrust* injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes [petitioners'] acts unlawful." *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, No. 75–904, decided January 25, 1977, slip op. 11.[10]

If respondents were in fact injured by overcharges passed on to them, the principle favoring recovery by the victims supports allowing them to demonstrate their loss. It is widely accepted that at least part of an overcharge may be passed on, and it is not implausi-

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plaintiffs. See *Malamud* v. *Sinclair Oil Corp.*, 521 F. 2d 1142 (C.A. 6) (adopting the test of *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150); *Cromar Co.* v. *Nuclear Materials & Equipment Corp.*, 543 F. 2d 501 (C.A. 3) (adopting a balancing test taking into account the nature of the industry, the relationship of the plaintiff to the alleged violator, and the alleged effect of the violation on the plaintiff).

[10] Numerous commentators have concluded that the "target area" approach, which the Court apparently adopted in *Brunswick*, supports the right of indirect purchasers to recover damages. See, *e.g.*, Comment, *Standing to Sue in Antitrust Cases: The Offensive Use of Passing-on*, 123 U. Pa. L. Rev. 976 (1975); Comment, *Mangano and Ultimate-Consumer Standing: The Misuse of the Hanover Doctrine*, 72 Colum. L. Rev. 394 (1972); Note, *The Effect of Hanover Shoe on the Offensive Use of the Passing-On Doctrine*, 46 S. Cal. L. Rev. 98 (1972). But cf. Handler and Blechman, *Antitrust and the Consumer Interest: The Fallacy of Parens Patriae and A Suggested New Approach*, 85 Yale L. J. 626, 638–655 (1976) (apparently agreeing that indirect purchasers can recover damages under a proximate cause test, but arguing that problems of proof should lead courts to preclude such recovery).

ble to believe that respondents were injured.[11] Moreover, in many cases, of which this may be one, the goal of deterrence cannot be achieved unless indirect purchasers are allowed to recover.

Indirect purchasers may have suffered the largest injuries and have the largest stake in recovery. Direct purchasers may be reluctant to file a suit that would jeopardize harmonious relations with a supplier; indirect purchasers, on the other hand, are unlikely to have business relationships with the antitrust violators and accordingly may be more likely to perform the role of private attorneys general that Congress envisioned. Indirect purchasers therefore perform a vital public function when they bring suits to recover for their private losses.

[11] When the cost of production of a good (here, buildings using concrete block) increases, sellers will demand more money for their product. Whether they recoup the full cost increase or whether, instead, they reduce their volume of sales and recoup part of the increase, depends upon the elasticity of the demand for their product. In almost all cases at least some pass-on is to be expected, and the Court has assumed this in analogous cases. For example, the Court has articulated in tax immunity cases a presumptive rule that a tax imposed on a seller is passed on to the buyer. *Gurley* v. *Rhoden*, 421 U.S. 200, 204–205. The "legal incidence" of a tax also ordinarily rests with the vendee of the person upon whom the tax is levied. *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463; *Diamond National Corp.* v. *State Board of Equalization*, 425 U.S. 268. Cf. *First Agricultural National Bank* v. *State Tax Commission*, 392 U.S. 339, 346–348. Although *Hanover Shoe* makes it clear that the courts should not indulge a similar passing-on presumption in antitrust cases, the tax cases demonstrate that passing-on may be a prevalent phenomenon that shifts the incidence of a tax or an illegal overcharge to the ultimate consumer or indirect purchaser.

In our view, under any version of a proximate cause test that takes account of the purposes of the treble damages provision of Section 4, respondents should be entitled to attempt to prove that they were damaged as a result of petitioners' acts. This follows directly from the language of Section 4, from its purposes, and from this Court's indications that it should be construed to carry out those purposes. This conclusion also is supported by this Court's decision in *Hawaii* v. *Standard Oil Co.*, *supra*, and by the recently enacted Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1383, 1394–1395.

In *Hawaii* this Court indicated that States and their subdivisions may recover for losses, caused by antitrust violations, they suffer in their role as consumers of goods and services (405 U.S. at 263 n. 14, 264). States usually consume or use goods and services in the manner of respondents in this case: they purchase them through intermediaries, such as wholesalers or contractors. *Hawaii* therefore endorses, at least implicitly, recovery by indirect purchasers.

So, too, does Congress. The Antitrust Improvements Act allows States to sue as *parens patriae* for damages inflicted by antitrust violations upon consumers within the State. Because consumers rarely purchase goods directly from the antitrust violators (unless there is a conspiracy among retailers), the promise of the Antitrust Improvements Act would be illusory unless Section 4 of the Clayton Act authorizes recovery for the losses inflicted upon indirect purchasers. The legislative history of the *parens patriae* provisions contains no evidence that Congress thought that it was

authorizing the States to sue in a *parens patriae* capacity only where consumers were direct purchasers. To the contrary, Congress assumed that indirect purchasers may recover.[12] In light of this congressional decision to expand the recovery of damages for losses inflicted upon consumers, the Court should construe Section 4 of the Clayton Act in a way that advances rather than defeats the evident purpose of this recent legislation.

Petitioners nevertheless argue that indirect purchasers may not recover damages, whether or not they could succeed in demonstrating that they had been injured "by reason of" petitioners' activities. Petitioners seek support for their position in *Hanover Shoe* and in the need to prevent multiple recoveries for the same violation of the antitrust laws. We turn to an analysis of petitioners' arguments.

B. THIS COURT'S DECISION IN *HANOVER SHOE* DOES NOT PREVENT INDIRECT PURCHASERS FROM ATTEMPTING TO PROVE THAT THEY HAVE BEEN DAMAGED

Hanover Shoe involved a suit by a direct purchaser of machinery used to manufacture shoes. The plaintiff

[12] The Ninth Circuit had held, in a widely-discussed opinion, that indirect purchasers may recover for proven losses caused by antitrust violations. *In re Western Liquid Asphalt Cases*, 487 F. 2d 191, certiorari denied *sub nom. Standard Oil Co.* v. *Alaska*, 415 U.S. 919. Congress evidently was familiar with this case; the major committee reports assumed that it correctly stated the law. See H.R. Rep. No. 94–499, 94th Cong., 1st Sess. 6 n. 4 (1975); S. Rep. No. 94–803, 94th Cong., 2d Sess. 44 (1976). One of the major sponsors of the Act stated that consumers could recover damages whether or not they purchased directly from the price-fixer. See 122 Cong. Rec. H10295 (daily ed., September 16, 1976) (remarks of Rep. Rodino).

claimed that the shoe machinery manufacturer had violated the antitrust laws. The manufacturer responded that the plaintiff had not been injured because it had passed on, to the buyers of its shoes, any illegal overcharges in the price of shoe machinery. The Court held that this defensive use of a passing-on claim could not be allowed to defeat the plaintiff's right to recovery.

The Court advanced several reasons for this holding. It observed that the indirect purchasers (the buyers of shoes) had suffered only a little loss on each purchase and that, because of this, none had brought suit; unless the plaintiff were allowed to recover, the violation of the antitrust laws would go without redress (392 U.S. at 494). Effective deterrence therefore would be undercut by defensive use of a passing-on claim.

The Court also concluded that the direct purchaser had suffered harm within the meaning of the antitrust laws because the violation was complete at the time the defendant extracted the overcharges for the shoe machines; "[a]s long as the seller continues to charge the illegal price, he takes from the buyer more than the law allows" (392 U.S. at 489). The goal of compensating the victims of antitrust violations therefore was inconsistent with the defensive use of a claim that the immediate buyer had, in turn, imposed the burden on its customers.[13] Finally, the Court concluded that pass-

[13] The fact that a direct purchaser may recover, from its own customers, the overcharge it paid does not necessarily mean that it suffered no damage. The increased price charged to customers by the direct purchaser may induce its customers to look to other sellers or to use substitute goods. The direct purchaser therefore may suffer a decrease in the volume of its sales, with a corresponding decrease in its profits.

ing-on is difficult to prove (392 U.S. at 491–493), and that problems of proof should not be allowed to consume judicial time and obstruct recovery by plaintiffs who have paid illegal overcharges.

1. Petitioners seize upon the last of these rationales. They argue that, if passing-on is difficult or impossible for defendants to prove in order to defeat recovery, it is just as difficult for plaintiffs to prove in order to obtain recovery. Therefore, they maintain, neither plaintiffs nor defendants should be allowed to contend that an overcharge was passed on to third parties.

Petitioners' argument goes far afield from anything in Section 4 of the Clayton Act. The argument that passing-on is difficult to prove does not establish that respondents were not injured in their business or property "by reason of anything forbidden" by the antitrust laws. It is, rather, an argument that respondents should be forbidden to prove that they were, in fact, injured "by reason of" petitioners' deeds.

Petitioners' argument mistakes the nature of the reasons advanced in *Hanover Shoe*. It exalts one reason (difficulty of proof) over two more important considerations (compensation of the victims and effective deterrence of antitrust violations). More important, it turns *Hanover Shoe* on its head by converting the argument that difficulties of proof should not be allowed to stymie recovery, as in *Hanover Shoe*, into the argument that difficulties of proof must stymie recovery, as in the instant case.

It is one thing to say that, in view of the important policy considerations favoring recovery, recovery will not be barred because the defendant may not be able

to prove in a particular case that the plaintiff suffered no damage. It is quite another to conclude that the difficulties plaintiffs as a class may face in proving damages justify denying recovery even to particular plaintiffs who can offer such proof.

Passing-on doubtless can be difficult to prove. Respondents may be put to a considerable task in establishing that they were injured "by reason of" overcharges paid by the direct purchasers. See *Hanover Shoe*, *supra*, 392 U.S. at 491–493. But respondents bear that burden; if they fail in their proof they will not recover. If it appears certain before trial that respondents' proof must fail, petitioners may be entitled to summary judgment.

Perhaps the difficulties of proof are such that many indirect purchasers would fail to establish damage. But petitioners' argument goes beyond this; petitioners seek the right to prevail without allowing the indirect purchasers the opportunity to submit proof. They seek to turn the fact that damages may be difficult to prove into a rule that proof may not be offered.

This approach is fundamentally incompatible with the rule that recovery is not defeated merely because proof may be difficult. *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 123–125, 130–131, 133. Questions concerning the sufficiency of the plaintiff's proof are ordinarily for the jury to determine, and judicial speculation that many plaintiffs will be unable to prove their claims is not a good reason to preclude every plaintiff from trying. Cf. *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 472–473; *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655.

In some cases the effect of an overcharge to the direct purchaser will be exceedingly difficult to discern. *Hanover Shoe* was one such case. The plaintiff bought shoe machinery but did not resell it; instead, the plaintiff used the machinery in the process of manufacturing shoes, then sold the shoes. It would have been hard to separate the effect of the price of shoe machinery from the price of shoe leather, employees' salaries, and all the other components of a finished shoe. The Court indicated, however, that other cases might be different and might permit even the defensive use of a passing-on claim; it gave as an example the case in which the overcharged buyer resold the goods pursuant to a preexisting "cost-plus" contract (392 U.S. at 494).

It follows that *Hanover Shoe* does not prohibit the offensive use of passing-on claims. For the reasons we have discussed at pages 8–15, *supra*, offensive passing-on claims should not be disfavored, as are defensive passing-on claims. An indirect purchaser should be entitled to demonstrate before trial how the overcharge may have been passed on; if he can do so, the resolution of the question whether the overcharge was passed on in fact should be left to the trier of the facts.

In the instant case respondents might be able to prove that the masonry subcontractors took the price of concrete block as a fixed item in computing their own prices, adding costs for labor and profit when submitting bids to do work calling for concrete block. The amount of such block to be used ordinarily is specified by the architect, so that it would not be hard to determine to what extent any overcharges led to the substitution of one product for another. If respondents could

introduce evidence of this sort concerning the practices of subcontractors, and other relevant information about the construction industry, they should be able to establish passing-on sufficient to allow the case to go to a jury.

Using this or similar reasoning, every court of appeals (but one) to consider the question after *Hanover Shoe* has concluded that neither this Court's decision nor any policy of the antitrust laws prevents indirect purchasers from attempting to prove that they have been injured.[14] The only exception—*Mangano* v. *American Radiator & Standard Sanitary Corp.*, 438 F. 2d 1187 (C.A. 3)—is a one-page *per curiam* opinion that does not consider any of the arguments made here. It has been explicitly rejected by subsequent appellate

[14] See, in addition to the decision below, *Yoder Bros., Inc.* v. *California-Florida Plant Corp.*, 537 F. 2d 1347, 1374–1375 and n. 27 (C.A. 5); *In re Western Liquid Asphalt Cases, supra*; *Illinois* v. *Bristol-Myers Co.*, 470 F. 2d 1276, 1278 n. 4 (C.A.D.C.) (by implication); *West Virginia* v. *Chas. Pfizer & Co., Inc.*, 440 F. 2d 1079 (C.A. 2), certiorari denied *sub nom. Cotler Drugs, Inc.* v. *Chas. Pfizer & Co., Inc.*, 404 U.S. 871 (by implication; it rejects an argument by direct purchasers that indirect purchasers should be excluded from a settlement fund). District courts have entertained indirect purchaser claims in several post-*Hanover Shoe* cases. See, *e.g.*, *Boshes* v. *General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill.); *In re Master Key Antitrust Litigation*, 1973–2 CCH Trade Cases ¶ 74,680 (D. Conn.); *Carnivale Bag Co., Inc.* v. *Slide-Rite Mfg. Corp.*, 395 F. Supp. 287 (S.D. N.Y.). Other courts have concluded that some indirect purchaser claims are barred. See *City and County of Denver* v. *American Oil Co.*, 53 F.R.D. 620 (D. Colo.); *United Egg Producers* v. *Bauer International Corp.*, 312 F. Supp. 319 (S.D. N.Y.); *Travis* v. *Fairmount Foods Co.*, 346 F. Supp. 679 (E.D. Pa.).

decisions[15] and has been subjected to considerable scholarly criticism.[16]

We submit that the majority of the courts of appeals are correct; acceptance of petitioners' position would create a topsy-turvy rule under which only the persons least likely to have borne the injury could recover damages for violations of the antitrust laws. This Court has held that the deterrent purpose of the antitrust laws requires that some persons be allowed to recover even though they may be uninjured (as in *Hanover Shoe*) and even though they themselves took part in violations (as in *Perma Life Mufflers*). If these classes of persons may recover damages, does it not follow that indirect purchasers, when they are the victims of price fixing, should be allowed to recover? Allowing recovery by indirect purchasers not only provides deterrence but also serves the goal of compensating those who suffered loss. Cf. *Bangor Punta Operations, Inc.* v. *Bangor & Aroostook R. Co.*, 417 U.S. 703, 717.

2. Petitioners also draw from *Hanover Shoe* the proposition that indirect purchasers may not recover damages for antitrust violations because they are not in privity with the offender (see Pet. Br. 9–10, 22).

[15] See, *e.g.*, *Yoder Bros, Inc.* v. *California-Florida Plant Corp.*, *supra*; *In re Western Liquid Asphalt Cases, supra*. The status of *Mangano* in the Third Circuit itself is in doubt. In *Cromar Co.* v. *Nuclear Materials & Equipment Corp.*, *supra*, the Third Circuit adopted, without mentioning *Mangano*, an *ad hoc* balancing test for determining who may recover damages for antitrust violations. The test articulated in *Cromar* is inconsistent with *Mangano*, which held that no indirect purchaser may recover damages.

[16] See, *e.g.*, the articles collected in note 10, *supra*.

They observe that *Hanover Shoe* quoted a passage from *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U.S. 531 (see 392 U.S. at 490–491 n. 8), and that this passage appears to say that only direct purchasers may recover.

Darnell-Taenzer was a case arising under the Interstate Commerce Act, and it did not discuss Section 4 of the Clayton Act. Taken in context, the Court's use of *Darnell-Taenzer* indicates only that a violation of the antitrust laws is complete when the overcharge is collected from the immediate purchaser. To the extent *Darnell-Taenzer* takes the position that a privity rule should be imposed in antitrust actions, which are a form of statutory tort,[17] time has passed it by.

Darnell-Taenzer was decided in 1918, when privity usually was required to recover damages for tortious conduct. But privity is not a precondition to recovery for the consequences of an intentional tort,[18] and even in the case of negligent torts privity is no longer a necessary ingredient.[19] Foreseeability and proximate cause, not privity, mark off the extent of the tortfeasor's liability.[20]

Any suggestion that the Court's quotation from

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[17] See *Simpson* v. *Union Oil Co.*, 311 F. 2d 764 (C.A. 9), reversed on other grounds, 377 U.S. 13; *Northwestern Oil Co.* v. *Socony-Vacuum Oil Co.*, 138 F. 2d 967 (C.A. 7), certiorari denied, 321 U.S. 792.

[18] See A.L.I., *Restatement of Torts* §§ 279, 280 (1934); *id.* at § 870 (1939). See also A.L.I., *Restatement (Second) of Torts* § 774A (Tent. Draft No. 14, 1969).

[19] See A.L.I., *Restatement (Second) of Torts* § 402A(2)(b) (1965).

[20] See *id.* at §§ 430, 433, 435, 435A.

Darnell-Taenzer was intended to set aside a long line of cases holding that privity is unnecessary under Section 4 of the Clayton Act[21] is inconsistent with the Court's statement (392 U.S. at 494) that a defensive passing-on claim might be recognized in the case of a "cost-plus" contract. If, as petitioners imply, the Court meant to adopt a privity rule, then no one could recover whenever a cost-plus contract were involved. The direct purchaser could not recover because the defense of passing-on would be accepted; the indirect purchaser's claim would fail for lack of privity with the defendant. Nothing in *Hanover Shoe* supports such a result, and we submit that the Court did not adopt or endorse a rule requiring privity with the defendant as a condition to suit under Section 4.

C. THE POSSIBILITY OF DOUBLE RECOVERY AGAINST ANTITRUST DEFENDANTS DOES NOT JUSTIFY BARRING SUITS BY INDIRECT PURCHASERS

Petitioners raise the spectre of double recovery. The direct purchasers will recover the full amount of the overcharge without regard to any passing-on; therefore, they say, to allow any recovery by the indirect purchasers for overcharges that have been passed on would be to allow a second recovery, trebled, for the same overcharge. They conclude that this prospect can be avoided only by overruling *Hanover Shoe* or barring recovery by indirect purchasers.

This argument, although not without superficial appeal, is inadequate to support an absolute preclusion of recovery by indirect purchasers. Double recovery

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[21] See the cases cited in notes 3, 4, and 9, *supra*.

could occur only if many of the direct purchasers brought suit and recovered the full amount of the overcharges and if, thereafter, many of the indirect purchasers successfully proved that they had been damaged and also recovered. This will not often take place. Many potentially injured persons do not bring suit; *Hanover Shoe* is an example of this. Not all of the direct purchasers who sue recover the full amount of their claims; not all of the indirect purchasers who sue will be able to prove that overcharges were passed on to them. In fact, unless all of the direct purchasers sue and recover, damages actions by the indirect purchasers are the only way to ensure one full recovery by the victims of the unlawful conduct and the achievement of the deterrence Congress thought appropriate.

To put it another way, the possibility of double recovery in some cases does not justify a rule that in all cases indirect purchasers cannot recover. At best, it would provide support for a limitation on recovery by indirect purchasers if and only if, in a particular case, double recovery is threatened. That has not happened here. Petitioners do not contend that, if respondents prevail, the total recovery (including the amounts paid to the direct purchasers as part of a settlement) will exceed the total overcharges, trebled. This case is, therefore, not one in which double recovery is a problem.

The argument could conclude at this point. It is important, however, to point out that even if all of the direct and indirect purchasers bring suit, several procedural devices exist to avert multiple recovery.

If the direct and indirect purchasers bring suit in

the same court, it is a simple matter to consolidate the cases and to allocate damages in an appropriate manner. Fed. R. Civ. P. 42(a). The practicality of allocation among many purchasers has been demonstrated in the antibiotics cases. See *West Virginia* v. *Chas. Pfizer & Co., Inc.*, 440 F. 2d 1079 (C.A. 2). See also Wolfram, *The Antibiotics Class Actions*, 1976 A.B.F. Res. J. 251.

There are only two situations in which multiple recovery could come about: (1) where suits by direct purchasers are pending in one court and suits by indirect purchasers are pending in another court; or (2) where additional suits are filed after a final decision, based on the same violation, has provided full recovery. Even in these situations, however, there are practical and procedural safeguards that make multiple recovery unlikely.

If suits by direct and indirect purchasers are pending in different courts, they may be handled in one or more of the ways suggested by the *Manual for Complex Litigation.*[22] The *Manual* suggests (§§ 5.20–5.40), among other devices, use of the inter-district transfer power created by 28 U.S.C. 1404(b), coordination of pretrial proceedings of cases pending in different districts, transfers to a single district pursuant to 28 U.S.C. 1404(a), and transfers by the Judicial Panel on Multidistrict Litigation under 28 U.S.C. 1407. After pretrial transfers by the Panel, cases can be consoli-

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[22] 1 Pt. 2 Moore's *Federal Practice: Manual for Complex Litigation* (2d ed., 1976) ("*Manual*").

dated and transferred to the same district for trial under Section 1404(a).[23] See Rule 15 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation. The courts also have considerable authority to adjust class definitions in pending class actions to prevent double recovery by claimants at different stages of the chain of distribution. See *Manual* §§ 1.41–1.43.

These procedures can be used whenever direct and indirect purchasers' suits are pending at the same time. One other possible procedure is the invocation of statutory interpleader under 28 U.S.C. 1335. This would bring all of the plaintiffs (actual and potential) into the same court and would require them to compete among themselves for appropriate shares of the total recovery.[24]

The possibility of double recovery is enhanced if some cases (say, the suits by direct purchasers) proceed to judgment before suits by other potentially injured persons are filed. Even then, however, the prospects of double recovery are remote. The protracted

[23] For discussions of this process, see Note, *The Judicial Panel and the Conduct of Multidistrict Litigation*, 87 Harv. L. Rev. 1001 (1974); Comment, *The Experience of Transferee Courts Under the Multidistrict Litigation Act*, 39 U. Chi. L. Rev. 588 (1972).

[24] Service of process for statutory interpleader runs nationwide (28 U.S.C. 2361), and only "minimal" diversity is required. *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U.S. 523, 530–531. Statutory interpleader may be used whenever there is a real risk of double liability, even though the extent of liability is not certain. *Allstate Insurance Co.* v. *McNeill*, 382 F. 2d 84 (C.A. 4), certiorari denied *sub nom. Murray* v. *McNeill*, 392 U.S. 931; *MFA Mutual Insurance Co.* v. *Lusby*, 295 F. Supp. 660 (W.D. Va.).

nature of antitrust litigation, combined with the short four-year statute of limitations (Section 4B, as added, 69 Stat. 283, 15 U.S.C. 15b), makes it unlikely that direct purchasers will recover before indirect purchasers bring suit. The possibility of subsequent suits may make defendants unwilling to settle with any plaintiffs until the statute of limitations has run on all claims; a defendant following such a course would not be exposed to unexpected liability. In many cases, the present one included, the potential private plaintiffs learn of the antitrust violation simultaneously when the federal government files suit, and the private suits are filed within a short time thereafter.

Moreover, when indirect purchasers file suit first, their offer to prove that the direct purchasers above them in the chain of distribution passed on the overcharge will require discovery, and the initiation of discovery will put the direct purchasers on notice of a suit relating to their interests. Once this notice has been given, the direct purchasers (or other indirect purchasers) can decide promptly whether to seek recovery; if additional cases are filed, they can be consolidated with those pending.[25]

If all else fails, and the indirect purchasers delay bringing suit until after the actions by direct purchasers have ended in judgment, thereby impairing the defendants' ability to seek consolidation and apportion-

[25] If indirect purchasers succeed in proving that overcharges have been passed on to them, the judgment might be used by the defendants to reduce the recovery in any future suit by direct purchasers. This would be a legitimate "defensive" use of passing on, in addition to the "cost-plus" contract example given in *Hanover Shoe, supra*, 392 U.S. at 494.

ment of damages, a district court might, under some conditions, properly invoke the doctrine of laches. In such cases, the indirect purchasers could eliminate the possibility of prejudice to the defendants, and thereby resuscitate their suit, by stipulating that their recovery, when added to the recovery by the direct purchasers, will not exceed the total of the overcharges, trebled. In appropriate cases courts might require indirect purchasers to do so.

There may well be other ways to avoid multiple recovery. Enough has been said, however, to show that multiple recovery is by no means an inevitable or even a likely result of allowing damages recoveries by indirect purchasers. There will be time enough to consider the problem of multiple recovery in any case in which it threatens to occur. This is not one of them. Petitioners never sought consolidation under Fed. R. Civ. P. 42(a), even though it appears that all suits against them were brought in a single district court. Although petitioners settled the suits by the direct purchasers, they stipulated that this settlement would not affect the suits by the indirect purchasers (A. 61–62); in light of this stipulation, petitioners do not contend that the settlement and payment to the direct purchasers is a reason why the indirect purchasers should not recover.[26]

[26] With or without this stipulation, the settlement with the direct purchasers could not affect the right of respondents to recover. Petitioners never sought the consolidation and apportionment of damages that would easily have averted multiple recoveries. The settlement conceivably may have exceeded the amounts that a court would have apportioned to the direct purchasers (although the record does not disclose the amount of the settlement), but parties that enter into a settlement assume that risk.

In sum, petitioners have not offered a persuasive reason for adding to the requirements of Section 4 of the Clayton Act the restriction that only direct purchasers may recover for their loss. Congress has made the judgment that "[a]ny person" injured "by reason of anything forbidden" in the antitrust laws shall recover treble damages. That legislative judgment cannot be carried out if, as petitioners argue, broad classes of injured parties are to be forbidden to attempt to prove their claims. Neither fear of multiple liability nor the application of labels such as "direct" or "indirect" justifies an inflexible rule precluding proof of actual injury.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, ET AL., *Petitioners*,

vs.

STATE OF ILLINOIS, ET AL., *Respondents*.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE STATES OF ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, OREGON, RHODE ISLAND AND PROVIDENCE PLANTATIONS, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA, WISCONSIN AND WYOMING, THE COMMONWEALTHS OF PENNSYLVANIA AND VIRGINIA AND THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL AS AMICI CURIAE

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Carrol v. Protection Maritime Ins. Co., 512 F.2d 4 (1st Cir. 1975)	19
Chattanooga Foundry & Pipe Works v. Atlanta, 203 U.S. 390 (1906)	8
Clark Oil Co. v. Phillips Petroleum Co., 148 F.2d 580 (8th Cir.), *cert. denied*, 326 U.S. 734 (1945)	17
Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co., 315 F.2d 564 (7th Cir.), *cert. denied*, 375 U.S. 834 (1963)	23,25

TABLE OF AUTHORITIES CITED

Cases (continued): *Page*

Conference of Studio Unions v. Loew's, Inc., 193 F.2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952) 20
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Dickinson v. Burnham, 197 F.2d 973 (2d Cir.), *cert. denied*, 344 U.S. 875 (1952) 29,40
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Hawaii v. Standard Oil Co., 405 U.S. 251 (1972) 6,15,18
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In re Antibiotic Antitrust Actions, 333 F. Supp. 278 (S.D.N.Y. 1971) 29,40
In re Caesar's Palace Securities Litigation, 385 F. Supp. 1256 (J.P.M.L. 1974) 39

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Cases (continued): *Page*

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In re Sta-Power Industries, Inc. Securities & Antitrust Litigation, 404 F. Supp. 476 (J.P.M.L. 1975) 39
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Kauffman v. Dreyfus Fund, 434 F.2d 727 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971) 19
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Mangano v. American Radiator & Standard Sanitary Corp., 438 F.2d 1187 (3d Cir. 1971)	17,33
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Midway Enterprises, Inc. v. Petroleum Marketing Corp., 1974-2 Trade Cas. ¶ 75,200 (D. Md. 1974).	17,18
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Pfizer, Inc. v. Lord, 449 F.2d 119 (2d Cir. 1971)	40
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Yoder Bros., Inc. v. California-Florida Plant Co., 537 F. 2d 1347 (5th Cir. 1976)	17,19

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Statement of "Appropriate Legislative Intention," Representative Peter W. Rodino, Sept. 16, 1976, *reported in* CCH Trade Reg. Rep. No. 249, ¶ 350.10 (Oct. 6, 1976).	15
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-404

ILLINOIS BRICK COMPANY, ET AL., *Petitioners*,
vs.
STATE OF ILLINOIS, ET AL., *Respondents*.

BRIEF FOR THE STATES OF ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, OREGON, RHODE ISLAND AND PROVIDENCE PLANTATIONS, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA, WISCONSIN AND WYOMING, THE COMMONWEALTHS OF PENNSYLVANIA AND VIRGINIA, AND THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL AS AMICI CURIAE

INTEREST OF AMICI CURIAE

The States of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island and Providence Plantations, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming and the Commonwealths of Pennsylvania and Virginia respectfully submit this

brief *amici curiae* pursuant to Supreme Court Rule 42(4). *Amicus* National Association of Attorneys General respectfully submits this brief with the consent of all parties to this case pursuant to Supreme Court Rule 42(2).

Within our federal system, the 50 States play an important role in antitrust enforcement. In their proprietary capacities, for example, the *amici* States purchase a wide range of goods and products. In 1973 alone, the 50 States and their political subdivisions spent approximately $75.7 billion for goods and services. Council of State Governments, State and Local Purchasing 1.1 (1975). As the actual users of these goods and services, the *amici* ultimately bear most — if not all — of the burden of any unlawful overcharges which are imposed in the chain of distribution. To vindicate their interests as actual users of over-priced goods and services and to enforce state and federal antitrust laws, the 50 States have vigorously prosecuted antitrust damage actions, including actions in the following industries: ampicillin, asphalt, automobile fleet sales, brass mill tubing, bread, cast iron pipe, cement, children's books, gypsum wallboard, master key systems, milk, plumbing fixtures, sugar, and tetracycline. *See* National Association of Attorneys General, State Antitrust Laws and Their Enforcement 4 (1974).

In addition, Congress has assigned to the States considerable responsibilities for enforcement of the federal antitrust laws. In the Crime Control Act of 1976, Pub. L. No. 94-503, § 116 (Oct. 15, 1976), for example, Congress authorized appropriations of $10 million per year for antitrust enforcement by State

Attorneys General. Further, Congress has empowered State Attorneys General to sue as parens patriae to recover damages for violations of the Sherman Act on behalf of citizens of the respective States. Pub. L. No. 94-435, § (Sept. 30, 1976).

Accordingly, the *amici* States have direct and substantial interests in both their proprietary and sovereign capacities in their ability to obtain legal redress for injuries they and their citizens suffer by reason of antitrust violations.

Amicus National Association of Attorneys General also has a significant interest in this litigation. The membership of the National Association of Attorneys General consists of the Attorney General of each state and territory. The Association exists to facilitate and nuture the effective conduct of the office of Attorney General and to provide a means of its members to speak jointly on issues.

QUESTION PRESENTED

Does the actual user of a product the price of which was conspiratorially increased state a claim for relief under section 4 of the Clayton Act even though he bought through a middleman rather than directly from the alleged conspirator?

STATEMENT OF THE CASE

Petitioners are concrete block manufacturers who are charged with conspiring to fix the price of the concrete block they sell. App. 8-11. Respondents purchase concrete block from petitioners through masonry contractors and general contractors. The amount ultimately paid by owner-builders for concrete block

used in buildings and other structures can be readily determined.[1]

Illinois sued the concrete block manufacturers to recover the alleged overcharges for concrete block it paid as an owner-builder. App. 6. Other treble damage actions were filed by masonry contractors, general contractors and other owner-builders in addition to the State of Illinois. App. 205. All of these other cases eventually were settled. *Ibid.*

On petitioners' motion, discovery was stayed by the District Court (App. 201-03, 208) to allow petitioners to move for summary judgment on the legal ground that only those in privity with a price-fixer could assert a claim for relief. The District Court rejected this broad argument but nonetheless granted the summary judgment motion. *Illinois v. Ampress Brick Co.*, 67 F.R.D. 461 (N.D. Ill. 1975). The District Court reasoned that a purchaser "who obtains goods from the manufacturer or from a [middleman] but who in either case acquires the goods in the same condition as originally made and sold by the manufacturer" could assert a claim for relief but one "who obtains a finished product from a middleman that has altered or added to the

[1] In the Lake County Nursing Home project, for example, the owner-builder paid $23,566 for concrete block. App. 235. The amount paid for concrete block in other projects presumably could be determined through the records of masonry and general contractors but since discovery was stayed upon petitioners' motion (App. 201-03, 208), this evidence has not yet been adduced. In any event, it is necessary to interpret the record most favorably for respondents since this case comes here on petitioners' motion for summary judgment.

goods" could not.[2] *Id.*, at 466. Despite the fact that the block purchased by Illinois was the same block that left petitioners' plants and even though Illinois could demonstrate the amount paid for the block, the District Court ruled that Illinois could not assert a claim for its injury and therefore granted the block manufacturers' motion for summary judgment.

The Seventh Circuit reversed. *Illinois v. Ampress Brick Co.*, 536 F.2d 1163 (7th Cir. 1976). The Court of Appeals held that the actual users of conspiratorially priced products could assert claims under section 4 of the Clayton Act even if they purchased through middlemen. The Court also ruled that the actual amount of damages was a question of fact on which the parties were entitled to conduct discovery and proceed to trial.

This case is here on a petition for a writ of certiorari which this Court granted. 97 S. Ct. 352 (1976).

SUMMARY OF ARGUMENT

Section 4 of the Clayton Act, 15 U.S.C. § 15, reaches broadly to protect any antitrust victim "injured in his business or property." The purchaser of a conspiratorially priced product or commodity should be entitled to assert a claim for relief without regard to whether he purchased directly from the price-fixers or through

[2] The District Court based this distinction upon a student commentary (67 F.R.D., at 466 n.3), even though that commentary had concluded that claims such as Illinois' should proceed to trial: "[T]he courts should allow all levels of consumer plaintiffs to attempt to establish at trial the fact of their damages rather than bar them at the outset from seeking to prove their injuries." Comment, 72 Colum. L. Rev. 394, 414 (1972)

a middleman and without regard to whether that conspiratorially priced product or commodity may have been combined with some other product in the production process. In contrast, where the plaintiff purchased neither the conspiratorially priced product nor something containing that conspiratorially priced product, he may not be allowed to assert a claim. In *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972), this Court acknowledged this distinction, recognizing that the plaintiff could assert a claim for over-priced gasoline it actually purchased but denying recovery where the injury alleged was an indirect one to the State's general economy resulting from over-priced gasoline. So, too, in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), where the claim of a purchaser of unlawfully priced machinery was allowed. If, by contrast, a purchaser of shoes had sued it would necessarily have been on the basis of indirect injury resulting from overcharges for machinery used to make the shoes rather than from any overcharge in the shoes themselves and no recovery would have been permitted.

Once the threshold question of entitlement to sue is resolved, the decisions of this Court and the experience in the lower courts demonstrate the relative ease of proof of damages. Antitrust plaintiffs need only present evidence from which "a just and reasonable inference" of the amount of damages can be made "although the result be only approximate." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931). Nor does tracing overcharges through a number of levels of a distribution system present any insuperable evidentiary issues because this

Court has expressly approved treble damage jury verdicts based on such evidence. *Perkins v. Standard Oil Co.*, 395 U.S. 642 (1969). Indeed, even under the unrealistically rigid standard advanced by petitioners, the State of Illinois is entitled to proceed to trial with its claim and certainly should not have had its claim dismissed on a summary judgment motion before it had the opportunity to complete discovery.

Recognizing that all purchasers of conspiratorially priced goods have claims against the price-fixers is the only rule which serves the dual policies of deterrence against antitrust violators and the compensation of those actually injured. If petitioners' arbitrary limitations were adopted, they would deny relief to purchasers who suffered the greatest injury and who are therefore most likely to vindicate the public interest in antitrust enforcement. Petitioners' argument, moreover, would deny relief to all purchasers but those who had immediate dealings with price-fixers and who — because of mark-up pricing practices — may actually have profited from the conspiracy. Such purchasers would be improbable ones upon whom to place the entire burden of private antitrust enforcement since their ongoing business relationships and their own profits could be threatened if they brought suit. Permitting all injured purchasers to recover for their injuries does not open the door to duplicative recoveries. The fact that there is no reported instance where a defendant has complained of an actual duplicative antitrust damage award demonstrates that the lower courts and counsel have successfully utilized recognized procedures to avoid this spectre.

ARGUMENT

I

PURCHASERS OF PRICE-FIXED PRODUCTS ARE ENTITLED TO PRESENT PROOF OF DAMAGES EVEN IF THEY DO NOT STAND IN PRIVITY WITH THE ALLEGED CONSPIRATORS

A. Section 4 of the Clayton Act Affords Broad Relief to Antitrust Victims Injured in Their "Business or Property"

Section 4 of the Clayton Act, 15 U.S.C. § 15, vests antitrust victims with the right of recovery:

> Any person . . . injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee.

It is difficult to conceive of language broader than the words "any person" and, indeed, in *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948), this Court emphasized the breadth to be given these words:

> The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.

Nor is the phrase "business or property" one which is to be given a narrow reading. *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U.S. 390 (1906), was a suit by a municipality for overcharges in pipe purchased for its waterworks system.[3] There, this Court held, "[The city] was injured in its property . . . by being led to pay more than the worth of the pipe. A person whose property is diminished by a payment of money wrongfully induced is injured in his property." *Id.*, at 396.

Section 4 is not to be limited through technical or artificial interpretations. Section 4, after all, was designed to "protect the victims of the forbidden practices as well as the public." *Radovich v. National Football League*, 352 U.S. 445, 454 (1957). "In the face of such a policy, this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws." *Ibid.*

B. All Purchasers of Unlawfully Priced Products Are Within the Foreseeable "Target Area" of Injury and Are Entitled to Redress Under Section 4

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[3] Petitioners cite *Chattanooga Foundry* as a case in which this Court held "that the first purchaser of a price-fixed product is the proper party to recover for the overcharge." Pet. Br. 9. With all due respect, petitioners misstate the holding of *Chattanooga Foundry*. This Court attached no importance to whether the City of Atlanta purchased directly from the price-fixer or through a middleman and, instead, upheld the city's claim simply because it was "led to pay more than the worth of the pipe." 203 U.S., at 396. Indeed, there was no "privity" between plaintiff and the defendants because the city had purchased from the Anniston Pipe & Foundry Company which was not even named as a defendant. The Circuit Court of Appeals, in fact, commented, "[T]hat [Atlanta] is not suing that corporation [from which it purchased] is of no vital significance." *Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F. 23, 25 (6th Cir. 1903), *aff'd* 203 U.S. 390 (1906).

Petitioners ignore this Court's guidelines for the interpretation of section 4 and argue instead for resurrection of the outdated concept of privity. Under petitioners' view, only those who dealt directly with the price-fixers are entitled to recover for their injuries. The requirement of privity, however, was rejected in Congress when the Sherman Act was enacted and the lower courts have consistently refused to adopt this archaic talisman. Recovery for antitrust violations does not depend on outdated and empty formalisms such as privity. Rather, the appropriate inquiry is whether the plaintiff comes within the "target area" of the alleged violation and under that standard all purchasers of conspiratorially priced products are entitled to assert their claims for relief.

1. *The Congress which enacted the Sherman Act intended to extend relief to actual users and not simply to middlemen.* Section 4 of the Clayton Act was originally enacted as section 7 of the Sherman Act of 1890. The evils which the 51st Congress sought to proscribe by the Sherman Act were the great trusts of the day such as the Sugar Trust and the Beef Trust. The 51st Congress recognized that individual consumers were the ones primarily injured by these trusts. Even though individual consumers of sugar, for example, obviously did not purchase directly from the trust, *see United States v. E. C. Knight Co.*, 156 U.S. 1 (1895), Congress intended that they be able to bring damage actions against the price-fixers. The sponsors of this seminal legislation therefore intended that it afford relief to the actual users or ultimate consumers of conspiratorially priced products and not simply to middlemen. Indeed, the debate over the damage remedy centered on means to ease the procedural burdens of consumers rather than on whether they would be entitled to assert claims in the first instance.

In explaining who was "injured" within the meaning of the damage remedy, Senator George, for example, included the ultimate consumer or actual user:

> An advance in the price to the middleman is not mentioned in the bill for the obvious reason that no such advance would damnify them; it would rather be of benefit, as it would increase the value of the goods he has on hand. He buys to sell again. He buys only for profits on a subsequent sale. So whatever he pays he receives when he sells, together with the profit on his investment; and so on all of them; including the last, who sells directly to the consumer. The consumer, therefore, paying all its increased price advanced by the middlemen and profits on the same, is the party necessarily damnified or injured. 21 Cong. Rec. 1767 (1890).

The remarks of Senator Spooner also typify the concern of the 51st Congress for the damage done by price-fixing to individual consumers:

> Most if not all of the combinations ... aimed at by the bill, are detrimental to the public interest. I think of them all it will be agreed that two of them, whose ramifications extend throughout the whole country and who directly affect the people generally in the country, the sugar trust and what is called the beef combine, are infamous in their oppression, the sugar trust dealing with an article which goes into the daily consumption of the people, which goes into every house, to every family. I believe 52 pounds per year per capita are used by the people of the United States. The object of this

> trust is to keep up to consumers the price of sugar. The beef combine . . . has been so successful as to maintain at the war rate the price of beef to consumers throughout the United States . . . . 21 Cong. Rec. 2640.

There can be no doubt, then, that the 51st Congress recognized that consumers were injured by price-fixing even though they were one or more levels removed from the price-fixers in the chain of distribution. Since a consumer was, concededly, a "person . . . injured in his business or property," the debate in the 51st Congress centered on the means to facilitate consumer damage actions under the predecessor of section 4 rather than on whether the consumer should be allowed to sue at all.[4]

The requirement of jurisdictional amount was eliminated in antitrust damages actions, for example.

[4] In discussing an early version of the bill, for example, Senator Hiscock sarcastically questioned whether the remedy was sufficient to allow consumer redress and to deter violators:

> Now, then, let us look at the only remedy that the bill affords to an oppressed people.
>
> . . . .
>
> A person sues the corporation or the combination or party to the combination. . . . The middlemen will never commence these actions. I mean the parties who in the first instance purchase of the combination. That will be guarded against, and the people who are to suffer the damages are those who are distributed all over this broad land, the consumers of the merchandise/buying perhaps a hundred dollars' worth and damages possibly $10, and they have the right to follow this combination or a party to it wherever he is domiciled and recover twice the amount of damages they have sustained! 21 Cong. Rec. 2571 (1890).

See also id., at 3147-48 (1890) (Sen. George).

Senator Sherman explained that this was intended to permit suit by plaintiffs with small claims such as the individual consumers for whom Senators George and Spooner had expressed concern: "Those words were inserted with a view to giving a remedy to persons who had suffered in a minor degree."[5] 21 Cong. Rec. 2612 (1890). *Accord, id.*, at 3148-49.

There were a variety of proposed amendments which, though they were ultimately rejected, demonstrate further the congressional intent to extend a remedy to the individual consumer who necessarily purchased from the great trusts through middlemen. Senator Reagan, for example, twice offered amendments to vest state courts with concurrent jurisdiction to entertain claims under the predecessor of section 4. *Id.*, at 2612, 3146. The purpose behind this amendment was that "[m]en of ordinary means (and that is the class of men who are usually subjected to wrongs

[5] Senator Teller's argument in favor of waiving the jurisdictional amount demonstrates that this provision was bottomed on the desire to facilitate the claims of the individual consumer who, of course, purchased through a middleman:

> We want to give the United States courts jurisdiction without reference to the amount involved. It is the subject-matter simply that we want the court to have jurisdiction of, and not the amount, and if we limit the amount there is not one man out of a hundred who are damaged who will ever have an opportunity of getting redress. It may be that there will not be a case prosecuted where there is a large amount of damage. . . . I think we had better let the parties go into court on any amount. If they are damaged by these proceedings which we are about to declare illegal, they ought to be allowed to sue, no matter what the amount of damage may be.

of this kind) would not be able to employ lawyers and to take witnesses to the circuit court of the United States, and perhaps travel a great distance to reach there, in order to prosecute a suit for a few hundred dollars." *Id.*, at 3146. Though Senator Reagan's amendment was rejected, the rejection was solely because of doubts over the federal power to vest state courts with jurisdiction to hear federal penal actions and there was never any suggestion that the federal courts could not entertain suit by "men of ordinary means" who purchased from price-fixers through middlemen. *Id.*, at 3146-47. Other proposals to broaden the consumers' right to recover were rejected on a variety of grounds (*e.g.*, *id.*, at 3148), but never was there any suggestion that a consumer be barred from suit or that recovery be denied because the plaintiff did not deal directly with the price-fixer. Any such suggestion would have been contrary to the manifest congressional purpose of helping the consumer recover for the injury caused by the trusts.

Contrary to petitioners' narrow interpretation, therefore, the proponents of the forerunner of section 4 contemplated that plaintiffs such as the State of Illinois who had purchased through middlemen would be entitled to bring suit to recover for their injuries.[6]

[6] The most recent Congress has interpreted section 4 to allow claims by persons who purchased through middlemen. While the interpretation by the 94th Congress is not, of course, contemporaneous legislative history of either section 7 of the Sherman Act or section 4 of the Clayton Act, it is an interpretation of section 4 by a coordinate branch of government to which this Court should give appropriate deference.

Since this Court should apply the antitrust laws "in light of ... the economic realities with which its

In Pub. L. No. 94-435 (Sept. 30, 1976), Congress enacted a new section 4C of the Clayton Act to overrule in part this Court's decision in *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972), and to empower State Attorneys General to sue as parens patriae to recover damages on behalf of citizens of their respective States. The language of section 4C closely parallels that of section 4. Specifically, section 4C provides for monetary relief "for injury sustained by ... natural persons to their property by reason of any violation of the Sherman Act." The Senate version did not require "injury to property" but the House of Representatives insisted upon the language ultimately enacted to retain "traditional elements of private recoveries." Statement of "Appropriate Legislative Intention," Representative Peter W. Rodino, Sept. 16, 1976, *reported in* CCH Trade Reg. Rep. No. 249, ¶ 350.10 (Oct. 6, 1976). In adopting the language from section 4, Congress intended to allow recoveries by injured persons who did not purchase directly from the price-fixers:

> Thus, assuming the State attorney general proves a violation, and proves that an overcharge was "passed on" to the consumers, injuring them "in their property"; that is, their pocketbooks — recoveries are authorized by the compromise bill whether or not the consumers purchased directly from the price fixer, or indirectly, from intermediaries, retailers, or other middlemen. The technical and procedural agrument that consumers have no "standing" whenever they are not "in privity" with the price fixer, and have not purchased directly from him, is rejected by the compromise bill. Opinions relying on this procedural technicality ... are squarely rejected by the compromise bill. *Ibid.*

Congress used the language of section 4 because it understood that language to allow recoveries by plaintiffs who purchased through middlemen rather than directly from the price-fixers. That is an interpretation of section 4 to which this Court should give appropriate deference.

framers were concerned," *Federal Trade Commission v. Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968), the State of Illinois should not be denied the opportunity to prove its damages.

2. *The lower courts have rejected privity as a requirement in antitrust cases.* Though petitioners argue that "only the first or direct purchasers could recover" (Pet. Br. 8), this notion of privity has no more currency in antitrust law than it does in other areas of tort law.

In *Boshes v. General Motors Corp.*, 59 F.R.D. 589, 595 (N.D. Ill. 1973), for example, Judge Decker answered the argument that *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), had somehow imposed upon antitrust plaintiffs the additional requirement of proving privity:

> [T]he opinion nowhere specifically states that Hanover Shoe had standing *because* it was in 'privity' with United Shoe or that privity is a requirement of standing in private antitrust cases. In fact, this court has searched in vain for any discussion of the question of standing in the *Hanover Shoe* opinion. If the court there had intended to establish such a rule, it clearly would have said something about the recent and substantial body of authority which had reached a contrary conclusion and permitted suits under Section 4 of the Clayton Act by those not in 'privity' with the alleged antitrust violator.

Judge Decker concluded, "[I]t would be stretching *Hanover Shoe* beyond all recognition to hold that its rejection of the pass-on defense somehow returns Section 4 of the Clayton Act to the 'days when privity was king.' " 59 F.R.D., at 596.

Other lower courts have likewise rejected the argument of antitrust defendants that privity should be enshrined as an element of section 4.[7] This Court has

[7] *See, e.g., Yoder Bros., Inc. v. California-Florida Plant Co.*, 537 F.2d 1347, 1374 n.27 (5th Cir. 1976) (dictum); *Illinois v. Ampress Brick Co.*, 536 F.2d 1163, 1165 (7th Cir. 1976); *In re Western Liquid Asphalt Cases*, 487 F.2d 191, 197 (9th Cir. 1973), *cert. denied*, 414 U.S. 919 (1974); *Armco Steel Corp. v. North Dakota*, 376 F.2d 206 (8th Cir. 1967); *Vines v. General Outdoor Advertising Co.*, 171 F.2d 487, 491 (2d Cir. 1948); *Clark Oil Co. v. Phillips Petroleum Co.*, 148 F.2d 580, 582-83 (8th Cir.), *cert. denied*, 326 U.S. 734 (1945); *Lefrak v. Arabian American Oil Co.*, 405 F. Supp. 597, 599 (E.D.N.Y. 1975); *Carnivale Bag Co. v. Slide-Rite Mfg. Co.*, 395 F. Supp. 287, 290-91 (S.D.N.Y. 1975); *Bray v. Safeway Stores, Inc.*, 392 F. Supp. 851, 863 (N.D. Cal. 1975) (buyer victim of price depression); *Midway Enterprises, Inc. v. Petroleum Marketing Corp.*, 1974-2 Trade Case. ¶ 75,200 (D. Md. 1974); *Michelman v. Clark-Schwebel Fiber Glass Corp.*, 1974-1 Trade Cas. ¶ 74,974 (S.D.N.Y. 1974); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶ 74,680 (D. Conn. 1973), *appeal dismissed*, 528 F.2d 5 (2d Cir. 1975); *Boshes v. General Motors Corp.*, 59 F.R.D. 589, 597 (N.D. Ill. 1973); *Southern General Builders, Inc. v. Maule Industries, Inc.*, 1973-1 Trade Cas. ¶ 74,484 (S.D. Fla. 1972); *Washington v. American Pipe & Construction Co.*, 274 F. Supp. 961, 965 (W.D. Wash. 1967); *Missouri v. Stupp Brothers Bridge & Iron Co.*, 248 F. Supp. 169, 174 (W.D. Mo. 1965); *Washington v. General Electric Co.*, 246 F. Supp. 960, 962 (W.D. Wash. 1965).

Petitioners place heavy reliance on *Mangano v. American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971), for the proposition that "absent pre-existing cost-plus contracts or similar pricing arrangements, indirect purchasers cannot sue and recover for overcharges; only the first purchaser can." Pet. Br. 12. *Mangano*, of course, stands for no such principle. The Court of Appeals was careful to observe that "the [*Mangano*] plaintiffs [had] an opportunity, of which they could or would not take advantage, to show that these overcharges became compo-

recognized that "[t]he Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948). Accordingly, this Court should decline petitioners' invitation to engraft onto section 4 the anachronistic requirement of privity.

3. *The "target area" is the appropriate measure of a plaintiff's claim under section 4.* Despite the breadth of section 4, it is clear that "Congress did not intend the antitrust laws to provide a remedy in damages for every injury that might conceivably be traced to an antitrust violation." *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 n.14 (1972). It is the "target area" test which should be used for evaluating plaintiffs' entitlement to sue,[8] because this is the analysis most in

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nents of the prices they paid." *Id.* at 1188. Moreover, the Court of Appeals took pains to observe that the circumstances before it were unlike those in *Freedman v. Philadelphia Terminals Auction Co.*, 301 F.2d 830 (3d Cir. 1962). 438 F.2d at 1188, n.1. In *Freedman*, the Court recognized that a businessman who priced on a markup system passed on an illegal overcharge. 301 F.2d at 833. *Mangano* applied the wholly uncontroversial rule of law that any antitrust damages claimant must present some evidence of impact in order to recover to a situation where the claimant had failed to disclose the availability of such evidence when required to do so.

[8] While this Court has not expressly approved the "target area" standard, lower courts have interpreted the decisions of this Court as an implicit endorsement of the standard. *E.g., In re Multidistrict Vehicle Air Pollution*, 481 F.2d 122, 128 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973), *citing Perkins v. Standard Oil Co.*, 395 U.S. 642 (1969); *Midway Enterprises, Inc. v. Petroleum*

keeping with Senator George's concern for providing a remedy to "[t]he consumer [who] . . . pay[s] all . . . increased prices advanced by the middlemen and profits on same." 21 Cong. Rec. 1767 (1890).

To be actionable under section 4, the injury must be one resulting from "anything forbidden in the antitrust laws." Insofar as is relevant here, this involves whether injury to the particular plaintiff was foreseeable, namely, whether the plaintiff was within the "target area" of injury. The question of foreseeability

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Marketing Corp., 1974-2 Trade Cas. ¶ 75,200, at 97,398 (D. Md. 1974).

Although their application of the principle is not entirely uniform, the Courts of Appeal in the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits apply the target area or endangered zone standard. *Yoder Bros., Inc. v. California-Florida Plant Corp.*, 537 F.2d 1347, 1361 (5th Cir. 1976); *Illinois v. Ampress Brick Co.*, 536 F.2d 1163, 1164-65 (7th Cir. 1976) (injury within protected zone); *Long Island Lighting Co. v. Standard Oil Co.*, 521 F.2d 1269, 1274 (2d Cir. 1975), *cert. denied* 423 U.S. 1073 (1976); *Malmud v. Sinclair Oil Corp.*, 521 F.2d 1142, 1152 (6th Cir. 1975) (injury within protected zone); *Blankenship v. Hearst Corp.*, 519 F.2d 418, 425-26 (9th Cir. 1975); *Carrol v. Protection Maritime Ins. Co.*, 512 F.2d 4, 9 (1st Cir. 1975); *Sanitary Milk Producers v. Bergjans Farm Dairy, Inc.*, 368 F.2d 679, 689 (8th Cir. 1966); *South Carolina Council of Milk Producers, Inc. v. Newton*, 360 F.2d 414, 418 (4th Cir.) *cert. denied*, 385 U.S. 934 (1966). The Third and Tenth Circuits apply a "direct injury" test. *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727, 731 (10th Cir. 1973); *Kauffman v. Dreyfus Fund*, 434 F.2d 727, 732-34 (3rd Cir. 1970), *cert. denied*, 401 U.S. 974 (1971). The District of Columbia Circuit has not identified its position, but apparently would permit plaintiffs such as respondents herein to present proof of their injuries. *See generally Illinois v. Bristol Meyers Co.*, 470 F.2d 1276, 1278 n.4 (D.C. Cir. 1972).

or "target area" is, at bottom, a concept taken from tort law: Is the plaintiff one who could reasonably have been foreseen to be injured by the anticompetitive actions alleged. Or, as one court has said, the question is whether the plaintiff is "within the area of the economy which is endangered by a breakdown of competitive conditions in a particular industry." *Conference of Studio Unions v. Loew's, Inc.*, 193 F.2d 51, 55 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).

The "target area" analysis is akin to that used in other tort cases. The manufacturer of a wheel for an automobile can reasonably foresee that that wheel will be incorporated in an automobile, that the automobile will go through different levels of distribution and will eventually be purchased by its driver. If a defect in the manufacture of the wheel causes an injury to the driver, the manufacturer may properly be held accountable. *See MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916). So, too, in the present case. Though manufacturers of concrete block sell to masonry contractors, it is reasonably foreseeable — indeed expected — that the concrete block will be resold by the middleman and incorporated in a building or other structure.[9] Since the middleman in the distribution of concrete block is in business to make a profit and therefore must recover his material costs when reselling the block, it is reasonable to presume that the actual user of the concrete block suffers most if not all of the consequences of any conspiratorial overcharges by block manufacturers. This, after all, was the rea-

[9] *See* Brief for the State of California as Amicus Curiae at 12-16.

soning of Senator George when he noted, "[T]he middleman ... buys to sell again. He buys only for profits on a subsequent sale. So whatever he pays he receives when he sells, together with the profit on his investment; and so on all of them; including the last, who sells directly to the consumer." 21 Cong. Rec. 1767 (1890).

The target area standard provides an important and workable limitation on antitrust claims and is one which is readily satisfied by Illinois' claim in the present case. Where a conspiratorial overcharge for goods is alleged, all purchasers of those goods or products containing those goods are within the foreseeable target area of the price-fixing even though their purchases may have been made through middlemen. "[I]t is a curious result to suggest that a large manufacturer, who normally produces his goods with the intention and expectation that they will be distributed throughout several market areas, cannot foresee that his illegal price-fixing conduct will affect parties remote from his immediate business contacts." Comment, 72 Colum. L. Rev. 394, 413 (1972). Where, on the other hand, the injury alleged is different in kind from the reasonably foreseeable consequences of the anticompetitive acts, then the target area standard may not be satisfied. *See, e.g., In re Multidistrict Vehicle Air Pollution*, 481 F.2d 122, 129 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973); *Stern v. Lucy Webb Hayes Nat'l Training School*, 367 F. Supp. 536, 539 (D.D.C. 1973).

The *Electrical Equipment Conspiracy Cases* demonstrate this distinction. Among the thousands of

different plaintiffs who sued in those cases were electric utilities which purchased generating equipment from the defendant manufacturers through middlemen and consumers of electric energy who did not themselves purchase any generating equipment but who sought recovery for the increased price of electricity resulting from the over-priced generating equipment. The electric utilities were allowed to assert claims even though they purchased the equipment through middlemen as part of their purchases of electric generation facilities. *E.g., Washington v. General Electric Co.*, 246 F. Supp. 960, 962 (W.D. Wash. 1965) ("this Court is unwilling to deny plaintiff its right to sue merely because it purchased the equipment through a third party rather than directly from the manufacturer"). *See also In re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973), *cert. denied*, 415 U.S. 919 (1974) (purchasers of highways allowed to assert claims against producers of liquid asphalt which was combined with aggregate to make highways). The purchasers of electricity were in a different position, however. Unlike the electric utilities which purchased the price-fixed generators through middlemen as parts of electric generation facilities or Lake County which purchased price-fixed concrete block through middlemen as a part of its new nursing home (App. 235), consumers of electricity did not buy the conspiratorially priced product. Presumably, consumers of electricity paid higher prices because of the increased capital costs just as patients at the Lake County Nursing Home presumably paid higher prices because of the increased cost for concrete block. This interest did not bring them within the target area of the violation,

however. *See, e.g., Commonwealth Edison Co. v. Allis-Chalmers Manufacturing Co.*, 315 F.2d 564 (7th Cir.), *cert. denied*, 375 U.S. 834 (1963).

The difference between the electric utilities and the users of electricity thus illustrates the boundary between those within the target area and those without. This difference turns on whether the plaintiff purchases a product of the production process at least a portion of which was a conspiratorially priced input or whether his purchase was of a product the price of which was affected by a conspiratorially priced input but which did not physically include that input. Since the State of Illinois alleged that it "purchased . . . concrete block and . . . sustained damages as a result" (App. 7) it is within the foreseeable target area and should be allowed to proceed with proof of the amount of its injury.

C. *Hanover Shoe* is Consistent With the Target Area Standard

Hanover Shoe, Inc. v. United Shoe Machinery Corp., supra, is fully consistent with the target area approach. *Hanover Shoe* involved overcharges for machinery used in the production of shoes. The plaintiff was the manufacturer of shoes and the defendant was the lessor of the machinery in question. There was no middleman between plaintiff and defendant nor did plaintiff resell the machinery to other purchasers. The plaintiff in *Hanover*, then, was the only purchaser within the target area and, as such, was entitled to recover the full amount of the overcharge.

The overcharge for the machinery in *Hanover Shoe* was reflected in increased general operating expenses

just as the overcharge in the electric generators was reflected in increased general operating expenses for the electric utilities. Presumably, some portion of this increased general operating expense could be recovered through increased prices for the shoes or electricity produced by the overpriced machinery. Purchasers of shoes and electricity, however, were not within the target area of injury for overcharges in machinery used to produce the shoes or electricity since they were not purchasers of the machinery. Since the purchasers of shoes and electricity were not — for this reason — within the relevant target area, it would have been inappropriate to inquire whether any overcharge was passed on to them.

The target area standard can thus be defined in terms of the recognized cost accounting principles relied upon by this Court in *Hanover Shoe*. Unlike overcharges in a product which is resold in either unaltered form or as an ingredient of another product, increased general operating expenses incurred as a result of overcharges on one or more inputs to the production process cannot readily be allocated to the output from that production process on a per unit basis. This Court recognized this fact in *Hanover Shoe* when it noted that "costs per unit for a different volume of total sales are hard to estimate." 392 U.S., at 493. There is, to be sure, some difficulty in estimating per unit costs for generating operating expenses since the unit cost for such expenses will vary with the volume of goods sold.[10] No such difficulty exists for component costs, however, because for all practical purposes component costs remain the same on a per unit basis without regard to the volume of goods sold.

Petitioners' complete reliance upon *Hanover Shoe* is therefore greatly misplaced. The facts there dealt with overcharges incurred in general operating expenses. Since the target area includes only those who purchase the overpriced product in either unaltered form or as an ingredient of another product and since the purchasers of shoes did not buy the overpriced machinery, no proof of pass-on was relevant there. *See, e.g., Commonwealth Edison Co. v. Allis-Chalmers Manufacturing Co.*, 315 F.2d 564 (7th Cir.), *cert. denied* 375 U.S. 834 (1963). *Hanover Shoe* did not present the situation involved in the present case where a price-fixed product was resold. In such situations, all purchasers of the price-fixed product are entitled to present proof of their respective damages. *E.g., In re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973), *cert. denied*, 415 U.S. 919 (1974).

II

PROOF OF DAMAGES CAN PROCEED UNDER EVIDENTIARY STANDARDS RECOGNIZED AND APPROVED BY THIS COURT.

A. Because the Fact of an Antitrust Violation Makes Precise Proof of the Amount of Overcharge Problematic, This Court Has Ruled That an Antitrust Plaintiff Need Only Present Evidence for a "Just and Reasonable Estimate" of Damages.

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[10] There is no direct relationship between the cost of machinery used in shoe production and the ultimate cost of shoes.

Once the entitlement of a plaintiff to sue has been resolved, there remains the separate question of the proof of damages. Petitioners allude to unspecified but supposedly insurmountable problems of proof which would result if the actual users of conspiratorially priced products were allowed to seek redress for their injuries. Petitioners' argument is an attempt to turn the logic of the law on its head. Because the injuries were massive or because the price-fixing conspiracy was successful—so the argument goes—courts should not attempt the task of determining the amount of damages and should instead deny the injured suitor any relief. The decisions of this Court have consistently rejected such contentions and petitioners' argument here should likewise be rejected.

Proof of damages in price-fixing cases presents no unique or difficult problems. To be sure, if the price-fixing conspiracy were successful there would be no competitive price available to measure the amount of the unlawful overcharge. Defendants in antitrust damage actions commonly try to use this absence to their own advantage, contending that damages should not be assessed unless measured with demonstrable certainty. This Court has properly rejected these attempts to turn the success of an unlawful conspiracy into a shield from liability. Thus, in *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931), this Court said:

> Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such a case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.[11]

This is so because time and units variables will control the number of shoes across which the cost of the machinery must be amortized. Until the machine's useful life is expended, the number of shoes to which its cost must be amortized is unknowable.

The Court reaffirmed this doctrine in *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 266 (1946), accepting a "just and reasonable inference that [plaintiffs] were damaged by [defendants] action." *Accord, Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359, 379 (1927).

One of the purposes of the antitrust laws is, after all, deterrence. This purpose would be ill-served if price-fixers or monopolists were allowed to retain their un-

[11] In other contexts, this Court has applied the same analysis in apportioning the burden of proof. "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account." *Speiser v. Randall*, 357 U.S. 513, 525 (1958). This Court has apportioned the risk of error in factfinding by shifts in the burden of persuasion depending on the relative interests at stake. *E.g., Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971); *Speiser v. Randall, supra; see also Murel v. Baltimore City Criminal Court*, 407 U.S. 355, 362 (1972) (Douglas, J., dissenting) ("The nature of the rights implicated in the lawsuit thus determines the allocation and degree of the burden of proof and consequently the party upon whom the risk of errors in the factfinding process will be placed."). As this Court noted in *Story Parchment*, this risk of error in factfinding has been placed upon antitrust defendants whose unlawful acts "preclude the ascertainment of the amount of damages with certainty."

lawful gains. Beginning with cases such as *Story Parchment*, this Court has consistently fashioned evidentiary rules to avoid the "perversion of fundamental principles of justice [which would result if] . . . all relief [were denied] to the injured person, and . . . the wrongdoer [thereby relieved] from making any amend for his acts." *Hanover Shoe* is within this line of cases.

In *Hanover Shoe*, the only purchaser within the target area and therefore the only one entitled to assert a claim for relief was the shoe manufacturer which leased the overpriced machinery. If this particular plaintiff were denied the opportunity to recover the full overcharge, then the monopolist would, *pro tanto*, be "relieve[d] . . . from making any amend for his acts." In those circumstances where there was only one plaintiff entitled or able to sue, this Court barred evidence of pass-on because, if such evidence had been allowed,

> those who violate the antitrust laws by price fixing or monopolizing would retain the fruits of their illegality because no one was available who would bring suit against them. Treble-damage actions, the importance of which the Court has many times emphasized, would be substantially reduced in effectiveness. 392 U.S., at 494.

The analysis is essentially the same where, unlike *Hanover Shoe*, plaintiffs at more than one level of distribution are within the target area and bring suit. In such cases, the purpose of deterrence is obviously served when judgment is entered against the wrongdoers for "the fruits of their illegality." There remains, however, the additional purpose of the antitrust laws of compensating those actually injured. In cases of

plaintiffs at more than one level of distribution, this purpose is met by the division of the judgment between the different plaintiffs proportionate to their respective injuries. This is simply a matter of accounting, however, and is a concern solely between the different plaintiffs and one in which the alleged wrongdoer has no interest.[12] *Dickinson v. Rinke*, 11 Fed. R. Serv. 489, 490-91, 503 (S.D.N.Y. 1948), *aff'd sub nom. Dickinson v. Burnham*, 197 F.2d 973 (2d Cir.), *cert. denied* 344 U.S. 875 (1952). This Court has approved the presentation of evidence necessary to demonstrate the respective injuries sustained by different plaintiffs in such cases and the lower courts are familiar and experienced with considering such evidence.

B. Proof of Prices Paid for Unlawfully Priced Products at Different Levels of the Chain of Distribution Has Been Approved by This Court.

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[12] In administering class action antitrust cases, for example, the courts have repeatedly recognized that claimants on different levels of distribution have a common interest in establishing a violation of the antitrust laws, the impact of that violation, and, occasionally, the amount of the overcharge that the violator injected into the distribution system. The interests of purchasers on different levels diverge only when the question is how much of the overcharge was borne on each level. *See, e.g., In re Plywood Antitrust Litigation*, 1976-1 Trade Cas. ¶ 60,805 at 68, 482 (E.D. La. 1976) ("common interests in establishing . . . right to recover any damages on either of their parts"); *In re Gypsum Cases*, 1974-2 Trade Cas. ¶ 75,272 at 97,773 (N.D. Cal. 1974) (passing on and remoteness are "interclass differences"); *In re Antibiotics Antitrust Actions*, 333 F. Supp. 278, 281 (S.D.N.Y. 1971) ("far simpler to prove . . . total damages [to class] . . . than . . . aggregating individual damage claims").

Apparently conceding that respondents are within the target area and are entitled to bring suit, petitioners state emphatically, "The issue here ... is not standing, but rather proof of injury and monetary damage." Pet. Br. 15. Petitioners argue that there are supposedly "insurmountable" evidentiary problems which require that this Court announce a new rule under which only middlemen and not the actual users would be entitled to assert claims for relief for price-fixing. *Id.*, at 20. Petitioners' visions of "insurmountable problems" in proving prices paid at different levels in the chain of distribution are wholly illusionary because this Court has previously approved treble-damage judgments based on such evidence and the lower courts regularly consider such evidence without difficulty.

Perkins v. Standard Oil Co., 395 U.S. 642 (1969), was decided only one term after this Court's decision in *Hanover Shoe*. In *Perkins*, this Court upheld a treble-damage jury verdict based upon evidence which traced the price from the defendant through two middlemen to a competitor of the plaintiff. This Court held that the evidence permitted the jury to find that the unlawful price had been passed through these multiple links in the chain of distribution. *Id.*, at 649. If proof of prices paid at different levels in the chain of distribution depended upon evidence as ethereal as petitioners claim, then the jury in *Perkins* would not have been able to return its verdict and this Court would not have been able to affirm the judgment entered on that verdict. That this Court affirmed the *Perkins* judgment is the most persuasive evidence that proof of the overcharge paid at different levels in the chain can be made with demonstrable clarity.

Nor have the lower courts experienced any difficulty in evaluating evidence of the overcharges paid at different levels in the chain of distribution. Indeed, the relative ease with which the lower courts deal with such evidence belies the spectre of "insurmountable" problems raised by petitioners. *In re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973), *cert. denied*, 415 U.S. 919 (1974), illustrates the type of evidence with which the lower courts routinely deal. That case involved a price-fixing conspiracy in the sale of liquid asphalt which, when combined with aggregate to form asphaltic concrete, was used in highway construction. The plaintiffs there were state and local governments which purchased liquid asphalt through intermediary contractors just as respondents purchase concrete block through intermediaries in the present case. The bidding procedures used there were the same as those in the present case for the concrete block used in the construction of buildings. Relying on the depositions[13] and affidavits[14] before it, the Ninth Circuit

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[13] The deposition of Francis A. Lulay, a paving contractor, reflects the typical means by which the overcharge was passed on to the state and local governments:

> Q. Do you ever add on to that cost of that asphalt?
> A. We add a percentage on to everything.
> Q. What's the purpose of that?
> A. Profit.

Deposition of Francis A. Lulay at 20, *In re Western Liquid Asphalt Cases*, No. 50173 RES (N.D. Cal.)

[14] The affidavit of a contractor explained the manner in which the ultimate contract price was determined:

> 1. Each public road construction contract is composed of a number of separate items of work. Each item of work typi-

concluded that the amount of damages could be proved with the requisite certainty (487 F.2d, at 196 n.5) and that the plaintiffs were entitled to proceed to trial with their claims. *See also In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶ 74,680 (D. Conn. 1973), *appeal dismissed* 528 F.2d 5 (2d Cir. 1975).[15]

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cally is composed of certain material and labor costs. Certain items may also involve equipment costs.

2. The company uses a work sheet to compute the lowest costs to complete each item of work set forth in the contract. The company, in making its computation, ascertains in regard to each item, the actual cost, to the extent applicable, of the material, labor and equipment involved. The cost of those items of work to be covered by a subcontract, such as paving, is ascertained by obtaining bids from one or more subcontractors.

. . . .

5. The total bid price is arrived at by adding thereto additional amounts for overhead, contingencies and profit. These amounts vary from job to job.

487 F.2d, at 195 n.4.

[15] While dismissing the appeal from Judge Blumenfeld's ruling in *Master Key*, the Second Circuit expressed its agreement in his view that injury to actual users is susceptible of convenient proof:

> If the appellees establish at the trial for liability that the defendants engaged in an unlawful national conspiracy which had the effect of stabilizing prices above competitive levels, and further establish that the appellees were consumers of that product, we would think that the jury could reasonably conclude that appellants' conduct caused injury to each appellee. *In re Master Key Antitrust Litigation*, 528 F.2d 5, 12 n.11 (2d Cir. 1975).

Nor does the fact that the price-fixed product may have been combined with other products before resale necessarily create insurmountable evidentiary problems. And, in the circumstances of this case, this fact certainly does not mean that a plaintiff's claim should be dismissed without the opportunity to pursue discovery to determine if any evidentiary problems do, in fact, exist. In *Western Liquid Asphalt*, after all, the price-fixed product was liquid asphalt. Even though the liquid asphalt was combined with aggregate to form asphaltic concrete which, in turn, was combined with other products and services to form the highways which the plaintiffs purchased, the Ninth Circuit had no difficulty in determining that the plaintiffs could prove their damages with the requisite certainty. *Accord, e.g., Armco Steel Corp. v. North Dakota*, 376 F.2d 206, 210-11 (8th Cir. 1967).

The ability to prove damages is a factual question. There will be cases such as *Western Liquid Asphalt* where the plaintiff can readily come forward with such proof and others such as *Mangano v. American Radiator & Standard Sanitary Corp.*, 438 F.2d 1187 (3d Cir. 1971), *aff'g, Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970), where the plaintiff is unable or unwilling to come forward with proof. A defendant moving for summary judgment has the burden of demonstrating the absence of any disputed issue of fact which would allow recovery. *Adickes v. Kress & Co.*, 398 U.S. 144 (1970). Quite simply, petitioners here have not carried that burden and particularly in light of the stay of discovery by the District Court, sum-

mary judgment dismissing respondents' claims was improper on the present record.

III
THE CONGRESSIONAL POLICIES REFLECTED IN THE ANTITRUST LAWS WILL BE ADVANCED BY ALLOWING ALL PURCHASERS OF UNLAWFULLY PRICED PRODUCTS TO RECOVER FOR THEIR INJURIES UNDER APPROPRIATE STANDARDS

A. Allowing All Purchasers of Unlawfully Priced Products the Right to Recover Their Provable Damages Will Encourage the Private Enforcement of the Antitrust Laws.

Private enforcement of the antitrust laws serves the dual purpose of providing a deterrent to antitrust violators and compensating those injured by reason of antitrust violations. *E.g., Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 139-40 (1968). If all purchasers of unlawfully priced products were entitled to bring suit, then both purposes would be best served because the maximum deterrence would be provided and the competing claimants could share any recovery proportionate to their respective injuries. If only those in actual privity with the price-fixers were allowed to sue, however, both purposes would be ill-served because such parties would often have affirmative reasons for not bringing suit and, even if they did sue, they would often recover windfalls at the expense of subsequent purchasers in the chain of distribution who most likely bore the full measure of any overcharge.

Those who purchase directly from price-fixers are an improbable group upon whom to place the entire responsibility of private antitrust enforcement. As Senator George noted, those who purchase directly from price-fixers may actually profit by the continuance of the conspiracy through their own mark-up pricing practices. In any event, their business relationships with their suppliers would certainly be threatened if they were to sue their suppliers for price-fixing. In *In re Western Liquid Asphalt Cases*, 487 F.2d 191, 198 (9th Cir. 1973), *cert. denied*, 415 U.S. 919 (1974), the Ninth Circuit cited such reasons as the explanation for the general failure of the immediate purchasers to sue those who had fixed the price of liquid asphalt:

> It is understandable that contractors might not sue, in view of (1) their alleged dependence upon appellees for their suppiy of asphalt, (2) the possibility that they earned a percentage profit on the overcharges, and (3) the control and interdependence alleged between appellees and the contractors. Thus if the present appellants could establish antitrust violations but were precluded from recovering, no one else would sue, and appellees would retain their assumedly illegal profits.

In the name of deterrence, this Court has rejected holdings which would allow "those who violate the antitrust laws by price fixing or monopolizing [to] retain the fruits of their illegality because no one was available who would bring suit against them." *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 494 (1968). So, too, should this Court reject a holding which would limit relief to those in privity with the wrongdoers because such a group might well

have affirmative reasons for not bringing the wrongdoers to the bar of justice. *See generally* Wheeler, *Antitrust Treble Damage Actions: Do They Work?* 61 Cal. L. Rev. 1319 (1973).

Deterrence is not the only end to be served by private antitrust enforcement. As petitioners themselves correctly note, "If deterrence were the only objective, then in logic any plaintiff willing to file a complaint would suffice." Pet. Br. 16 *quoting Bangor Punta Operations, Inc. v. Bangor & Aroostook R. Co.*, 417 U.S. 703, 717 (1974). The need to compensate those injured by antitrust violations also determines who is entitled to bring suit under section 4. To afford adequate compensation, all injured parties should have the right to bring suit. Recovery certainly should not be limited to those which as a group are the least likely to have been injured by unlawful overcharges.

The original debates on the Sherman Act recognized that the injury caused by price-fixing was not necessarily limited to those who purchased from the price-fixers for resale. As Senator George argued, "An advance in the price to the middleman is not mentioned in the bill for the obvious reason that no such advance would damnify them; it would rather be of benefit, as it would increase the value of the goods he has on hand." 21 Cong. Rec. 1767 (1890). The decisions in the lower courts bear out Senator George's analysis. Both the lower courts[16] and potential claimants[17] recognize

[16] *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶ 74,680 at 94,980 (D. Conn. 1973).

[17] In *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 746 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1075 (2d Cir.), *cert. denied*, 404 U.S. 871 (1971), for example, the District Court found that the first purchasers were often unwilling even to share in a recovery because they knew they had not been injured:

> The attitude of the members of the wholesaler-retailer class indicates no real damage to them.
>
> . . . [A]bout 1500 members excluded themselves from the class. We are told by those opposed to the present allocation that 'some 1,500 claim forms [were] returned with statements by druggists that they were not damaged[d] and therefore wished to make no claim.' Several such statements by druggists were read into the record (SM 371-374). Typical is this statement from a druggist in Wisconsin (SM 372):
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> > Any pharmacy claiming damages is, in my opinion, guilty of lying. All pharmacies base their retail prices for drugs on their costs, either using a fixed percentage or a professional fee. Either way, they do not suffer damages due to higher wholesale costs of these drugs. If anyone has a complaint, it would be the individual consumer, not the pharmacists.

that those who purchase for resale intend a profit for their endeavors and therefore seek to recover any overcharges they pay from their customers.

None of this is to say, however, that only the last purchaser should be entitled to sue under section 4 or that persons who purchase for resale should never be allowed to assert claims. Wooden rules of that sort confuse the right to assert a claim with proof of damages and would not accomplish the stated purpose of section 4 to allow recovery for "injur[y] in . . . business or property." Rather, all parties within the target area should be afforded the right to present evidence of their damages.

B. Allowing All Purchasers of Unlawfully Priced Products the Right to Recover Their Provable Damages Will Not Result in Duplicative Recovery.

Petitioners' fear of duplicative recoveries if purchasers not in privity with violators may recover is wholly illusory. It is not surprising that there is no reported case in which an antitrust defendant claimed that he had been the victim of actual duplicative judgments, for the procedures available under the Federal Rules of Civil Procedure and the Judicial Code and the substantive rules governing damage awards make the possibility of duplicative recoveries highly speculative.

Duplicative recoveries could only arise if claims for the same damages were allowed to proceed separately. Defendants facing such separate, overlapping claims have ample incentive to seek their consolidation and the procedural tools for effecting such consolidation are readily available. The central thrust of modern procedural techniques for joinder of claims and parties and consolidation of actions is to assemble litigation into units susceptible of efficient and just resolution. To the extent that the actions from which duplicative recoveries might result are pending simultaneously in the same or different forums, these techniques will permit consolidation of the actions by middlemen and actual users before a single court in a single action.

Consolidation under 28 U.S.C. § 1407 (1970) is perhaps the most obvious method of bringing different plaintiffs before the same court. The requisites for such transfer will almost invariably be present when purchasers on different levels of distribution seek to

recover for the same overcharge. Common questions of fact on liability and the amount of the overcharge will be present if recovery is sought for the same overcharge by different plaintiffs, and the threat of duplicative recoveries will insure that transfer to a single district "will promote the just and efficient conduct of such actions." *Id.* § 1407(a). *See, e.g., In re Sta-Power Industries, Inc. Securities & Antitrust Litigation*, 404 F. Supp. 476, 477 (J.P.M.L. 1975); *In re Caesar's Palace Securities Litigation*, 385 F. Supp. 1256, 1258 (J.P.M.L. 1974); *In re Kauffman Mutual Fund Actions*, 337 F. Supp. 1337, 1340 (J.P.M.L. 1972). Actions transferred to a single district for pretrial purposes under § 1407(a) may also be transferred to that district for trial pursuant to 28 U.S.C. § 1404(a) (1970). *See, e.g., Pfizer Inc. v. Lord*, 447 F.2d 122 (2d Cir. 1971); *In re Master Key Antitrust Litigation*, 1975-1 Trade Cas. ¶ 60,377 (D. Conn. 1975).

Once in the same forum, consolidation is available under Rule 42, Federal Rules of Civil Procedure. If it is the actual user who is suing and the defendant fears the possibility of a duplicative recovery by a middleman who has not yet brought suit, joinder may be compelled under Rule 19, Federal Rules of Civil Procedure.

When the different claimants within the target area have been brought together in the same forum, the theoretical possibility of duplicative recoveries vanishes. At this stage the task is to determine the total overcharge for which the defendant is liable and then to apportion this sum among the different claimants in proportion to their respective injuries. *See Washing-*

ton v. American Pipe & Construction Co., 274 F. Supp. 961 (W.D. Wash. 1967).

Dickinson v. Burnham, 197 F.2d 973 (2d Cir.), *cert. denied* 344 U.S. 875 (1952), is an example of this two-step procedure of first determining the total injury caused by the overcharge and then dividing the damage award proportionately among the different claimants. That was a case where the District Court first awarded a judgment in favor of the group of claimants as a whole and then directed that they submit claims against the fund so created. *Dickinson v. Rinke*, 11 Fed. R. Serv. 489, 490-91 (S.D.N.Y. 1948), *aff'd sub nom. Dickinson v. Burnham, supra*. The District Court expressly rejected the argument that each claimant must prove his claim separately against the defendant. 11 Fed. R. Serv., at 501. Addressing the action taken by the District Court, the Second Circuit said:

> Obviously its solution was an eminently practical one; it declined to allow the wrongdoers to escape for some theoretical protection to or against persons who after all these years and having failed to respond to notice were surely not actually disposed to claim participation. By taking charge of the fund as it did, it afforded all necessary protection to the plaintiff while making a fair distribution to the actual parties in interest. And the result seems not merely practical, but legally sound. 197 F. 2d, at 979-80.

Other courts have reached the same conclusion. *E.g., Pfizer, Inc. v. Lord*, 449 F.2d 119, 120 (2d Cir. 1971); *In re Antibiotic Antitrust Actions*, 333 F. Supp. 281, 288-89 (S.D.N.Y. 1971); *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 715 n.15, 716, 63 Cal. Rptr. 724, 738 n.15, 739, 433 P.2d 732, 746 n.15, 747 (1967).

In sum, modern procedures adequately protect wrongdoers from the possibility of duplicative recoveries. Antitrust cases involving the passing on of an overcharge through an intermediate purchaser pose no threat of duplicative liability that cannot be avoided through available and tested procedural techniques. *Minnesota v. U.S. Steel Corp.*, 299 F. Supp. 596, 608 (D. Minn. 1969), *rev'd on other grounds* 438 F.2d 1380 (8th Cir. 1971). Petitioners may conjur up hypothetical cases in which duplicative recovery could occur, but they can do no more than cite a parade of imaginary horribles. In the absence of an actual case of duplicative recovery, the speculation urged by petitioners should not provide a basis for denying recovery to persons actually injured.

CONCLUSION

The Judgment of the Court of Appeals should be affirmed.

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In the Supreme Court of the United States

OCTOBER TERM 1976

No. 76-404

ILLINOIS BRICK COMPANY, AMERICAN BRICK CO., AMPRESS BRICK CO., INC., ANJO, INC., CHICAGO BLOCK CO., INC., E. L. RAMM COMPANY, HEIGHTS BLOCK, INC., JOLIET CONCRETE PRODUCTS, INC. AND NORTHFIELD BLOCK CO.,
Petitioners,

vs.

STATE OF ILLINOIS, et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

Brief of State of California Through Its Attorney General, Evelle J. Younger Amicus Curiae

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INTEREST OF THE AMICUS CURIAE

The District Court below granted defendants' motion for summary judgment holding that the State of Illinois and certain of its political subdivisions lacked standing under Section 4 of the Clayton Act (15 U.S.C. § 15) to sue for alleged price-fixing on concrete blocks used in public building contracts. The alleged violation occurred at the manufacturing level. The District Court concluded that plaintiffs were too remote, where the concrete block had been physi-

cally transformed into one of the components of a public building. *State of Illinois v. Ampress Brick Co., Inc.*, 67 F.R.D. 461, 468 (N.D. Ill. 1975).[1]

Defendants here do not press the reasoning of the District Court, and instead seek to support the decision by reference to *Hanover Shoe Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). Defendants raise in effect a passing-on type defense. They now argue that, even assuming plaintiffs have standing, that they can prove the alleged price fixing conspiracy, and that the conspiracy resulted in an illegal overcharge, plaintiffs still may not recover because they are precluded as a matter of law based on *Hanover* from showing injury. Defendants, in short, would defeat liability by barring plaintiffs from proving at trial that the alleged overcharge was passed on to them.

This Court would destroy a whole class of treble damage actions, and would leave state and local governmental entities dangerously exposed to abusive price-fixing conspiracies, if it were to uphold summary judgment on either the "standing" ground offered by the District Court or on the basis of the "passing-on" defense now offered by defendants. Acceptance of the rationale underlying defendants' arguments indeed would threaten the continued vitality of all private treble damage actions.

The State of California has brought a number of treble damage actions involving materials used in public construction contracts, to wit: concrete and steel water pipe, liquid asphalt, gypsum products, acoustical ceiling tile, resilient floor covering, plumbing fixtures, steel rebars, and cement. California's ability to protect itself adequately

1. The Court of Appeals reversed, finding that the Illinois plaintiffs did not lack standing, and that they should be allowed to prove their case at trial. *State of Illinois et al., v. Ampress Brick Co., Inc. et al.*, 536 F.2d 1163 (7th Cir. 1976)

from future price-fixing conspiracies depends on this Court's affirmation of the right of Illinois to bring suit in this case.

California, furthermore, through its Attorney General has a substantial interest in promoting enforcement of the antitrust laws through private treble damage actions. This Court should reject defendants' arguments for upholding the District Court's decision in order to prevent impairment of all private treble damage actions.

QUESTIONS PRESENTED

(1) Whether, after *Hanover Shoe,* an antitrust defendant may defeat liability to a legitimate plaintiff who has standing to sue and who otherwise would be entitled to recover an alleged overcharge, by raising as a defense passing-on matters which happen to fall before rather than after the plaintiff in the chain of distribution.

(2) Whether defendants are entitled to summary judgment, even conceding their interpretation of *Hanover Shoe,* without foreclosing the very real possibility that the award of a competitively bid public construction contract operates as a cost-plus contract to pass-on to the State or other awarding authority the full amount of material costs, including any overcharges.

SUMMARY OF ARGUMENT

Defendants raise a passing-on defense in direct contravention of the principles established in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). This Court in *Hanover* rejected a passing-on defense by a guilty defendant who offered to show that plaintiff had passed-on the alleged overcharge to others subsequent in the chain of distribution. 392 U.S. at 494. The Court at the same time established the overcharge as the proper measure of dam-

ages in a price-fixing case. 392 U.S. at 491, 494. Defendants would turn *Hanover Shoe* on its head by using it as a barrier to preclude, as a matter of law, plaintiffs who happen to fall subsequent in the chain of distribution from bringing treble damage actions. Defendants here would defeat liability by raising matters of passing-on which occur before plaintiffs in the chain of distribution, while in *Hanover* defendants sought to raise matters of passing-on which occurred after plaintiff. Defendants here as a corollary are saying that the proper measure of damages in a price-fixing case for a plaintiff other than the immediate purchaser is not the overcharge, but instead the overcharge subject to proof of passing-on matters. Defendants thus are using, and would continue to use in the future, *Hanover* as a basis for forcing plaintiffs and the courts into the evidentiary quagmire rejected by *Hanover*.[2]

The only distinction between the defense raised here and the defense rejected in *Hanover* is that the passing-on matters here happen to fall in front of rather than behind the plaintiff. The distinction is without a difference, for, as this Court could not make any clearer, it is irrelevant under the antitrust laws where a plaintiff happens to fall in the chain of distribution. *Perkins v. Standard Oil Co.*, 395 U.S. 642, 649 (1969). See also *Radovich v. National Football League*, 352 U.S. 445, 454 (1957); *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 236 (1948).

The Court in *Hanover* was impelled to its decision by (1) the importance of preserving the effectiveness of pri-

2. Defendants in certain multidistrict litigation cases following *Hanover* have been equally successful in bringing about months, even years, of discovery on the pass-on question. See *In re Western Liquid Asphalt Cases*, 487 F.2d 191 (9th Cir. 1973); *In re Master Key Antitrust Litigation*, 1973-2 Trade Cas. ¶ 74,680.

vate treble damage actions, 392 U.S. at 494, and (2) the necessity of avoiding the evidentiary difficulties ordinarily inherent in proving the extent, as opposed to the fact, of passing-on. 392 U.S. at 492, 493. These considerations underlying *Hanover* operate here to allow the Illinois plaintiffs to prove the fact and amount of their injury. The difficulties of proof described in *Hanover*, furthermore, do not exist for a plaintiff attempting to prove matters of pass-on as part of his case.

Summary judgment is improper in any case because, even if *Hanover* is considered applicable as interpreted by defendants, defendants have failed to foreclose the existence of a situation within the "cost-plus" exception noted in the opinion. 392 U.S. at 494. Several prominent decisions demonstrate the similarity between cost-plus contracts and public construction contracts awarded pursuant to competitive bids.

Defendants attempt to fill the vacuum created by the absence of a factual record here by reference to the facts used or assumed in their particular selection of cases, to wit: *Hanover Shoe*, supra, and *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 50 F.R.D. 13 (E.D. Pa. 1970), aff'd per curiam sub nom., *Mangano v. American Radiator & Standard Corp.*, 438 F.2d 1187 (3rd Cir. 1971). Counsel for Illinois plaintiffs disputes the defendants' version of the facts regarding the passing-on of material costs to the State or other awarding authority in a competitively bid public construction contract, thereby raising a factual issue sufficient to defeat summary judgment. The State of California, however, as Amicus respectfully disagrees with counsel for both plaintiffs and defendants regarding what the factual record, if developed, would likely show. We submit that neither version of the

facts by counsel is particularly accurate in relation to the real world of competitively bid public construction contracts. See e.g., *In re Western Liquid Asphalt Cases,* 487 F.2d 191 (9th Cir. 1973); *Armco Steel Corp. v. State of North Dakota,* 376 F.2d 206 (8th Cir. 1967); *In re Master Key Antitrust Litigation,* 1973-2 Trade Cas. ¶ 74,680; *Drennan v. Star Paving Co.,* 51 Cal.2d 409, 333 P.2d 757 (1958). California asserts its independent position on the facts because it believes that any decision by this Court on an antitrust matter should be on a factually sound basis, *State of Minnesota v. United States Steel Corp.,* 438 F.2d 1380 (8th Cir. 1971), in order to aid the Court in determining the economic realities of the situation. *United States v. Phosphate Export Assoc.,* 393 U.S. 199, 208 (1968).

The long established policy in favor of private treble damage actions requires affirmance of the right of Illinois to bring its action to trial.

ARGUMENT

I.

Defendants Here Are Attempting to Raise a "Passing-On" Type Defense in Direct Contravention of the Principles Established in Hanover Shoe.

Defendants here would as a matter of law preclude the State of Illinois and other Illinois plaintiffs from proving the impact and damages elements of their cases. Defendants base their position on *Hanover Shoe, Inc. v. United Shoe Machinery Corp.,* 392 U.S. 481 (1968). Defendants in effect are simply raising a passing-on defense which is directly contrary to the principles established in that case.

Hanover Shoe contains two basic holdings. The first is that an antitrust defendant, having violated the law, will normally not be allowed to defeat recovery of the result-

ing overcharge by one to whom he sold his goods by attempting to show that his buyer had "passed-on" the illegal overcharge to others in the chain of distribution. 392 U.S. at 494. The only exception exists where it is "easy" to prove the buyer has not been damaged, such as where the "overcharged buyer has a pre-existing 'cost-plus' contract. . . ." 392 U.S. at 494. The second holding, closely tied to the first, is that the proper measure of the buyer's damages in an overcharge case is the full amount of the overcharge. 392 U.S. at 491, 494.

The expressed underlying rationale for the holdings in *Hanover* was (1) the importance of preserving the effectiveness of private treble damage actions, 392 U.S. at 492, and (2) the need to avoid the usual evidentiary difficulties inherent in proving the extent of a pass-on. It is better that plaintiff receive a possible windfall than allow a guilty defendant to "retain the fruits of . . . [his] . . . illegality. . . ." Id., at 494.

It is well established by other decisions of this court that it is irrelevant for antitrust purposes where in relation to the defendant plaintiff happens to fall in the chain of distribution. *Perkins v. Standard Oil Co.,* 395 U.S. 642, 647 (1969). The right to bring suit under the antitrust laws is not limited to any particular class or categories of persons. *Radovich v. National Football League,* 352 U.S. 445, 454 (1957); *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 236 (1948).

Hanover Shoe thus established two basic principles of antitrust law when viewed in light of other antitrust cases. The first principle established by *Hanover* is that a guilty defendant, faced with a plaintiff who has standing to sue, and who can prove defendant's violation and that he in-

curred some injury as a result thereof,[3] may not thereafter attempt to defeat plaintiff's recovery of his damages by raising a "passing-on" type defense. It is wholly irrelevant to that principle that the plaintiff may fall subsequent in the chain of distribution rather than immediately following the wrongdoer so that the "passing-on" matters raised by defendant occur before rather than after plaintiff has incurred injury.

It is important not to confuse matters of "standing" with the passing-on defense rejected in *Hanover*. Genuine issues of "standing" may arise in cases where for reasons other than the principles established in *Hanover* the plaintiff may be considered too "remote". There may be wholly independent intervening markets for instance, involving the purchase by plaintiff of a product wholly unrelated to the product sold by defendant. See e.g., *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.,* 315 F.2d 564 (7th Cir.), cert. denied sub nom, *Illinois v. Commonwealth Edison Co.,* 375 U.S. 834 (1963). The District Court below in effect found a "standing" problem here unrelated to any matter arising from *Hanover Shoe* when it concluded plaintiffs were too "remote" because a public building was different than the concrete blocks from which it was made. 67 F.R.D. at 461.

The Court of Appeal, it is submitted, correctly rejected the District Court's decision and the defendants appropriately abandon the position here. The Illinois plaintiffs

3. Satisfaction of the "causation" requirement through proof of "injury" in every overcharge case, including in a first-purchaser case such as *Hanover,* is a matter of showing that the overcharge, assuming its existence, was "passed-on at least in part" to the plaintiff. *Perkins v. Standard Oil Co.,* supra at 649. Proof of "passing on" by one immediately following the wrongdoer may be a simpler matter than for one further removed in the chain of distribution, but he must still prove it. Cf. 392 U.S. at 489.

clearly satisfy any reasonable test for "standing", whether it be the "target area" or "direct injury" test. The plaintiffs necessarily were the known objects of the alleged conspiracy, and suffered the full brunt of its impact. See Argument II, infra.

The second teaching of *Hanover* when considered in light of other decisions of this Court is that a plaintiff who has standing, regardless of where he stands in the chain of distribution, who proves defendant's violation of the antitrust laws, and that he, plaintiff, suffered some injury as a result thereof, is normally entitled to recover the whole overcharge. The proper measure of damages in an overcharge case is the overcharge. It is irrelevant where plaintiff stands in the chain of distribution. *Perkins v. Standard Oil Co.,* supra at 647. See also *Radovich v. National Football League,* supra at 454; *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* supra at 236. *Hanover,* by holding that the extent to which plaintiff may have passed-on an illegal overcharge is irrelevant, 392 U.S. at 494, at the same time established the principle that the extent to which the overcharge may have been passed-on to the plaintiff is equally irrelevant to the proper measure of damage.[4]

Defendants' position here is thus clearly contrary to the principles of *Hanover*. Defendants simply raise a pass-on type of defense in order to defeat recovery by plaintiffs who assumedly can satisfy the standing and prove the violation elements of their case, and, who otherwise would be allowed to prove the impact and damages elements in accordance with established principles of antitrust law.

Defendants cling to a weak reed in *Hanover* in order to avoid the clear effect of the above principles. Defendants

4. Any other result in either case would allow the wrongdoer, faced with liability to an otherwise legitimate plaintiff, to keep the fruits of his illegality. See 392 U.S. at 493.

argue that the evidentiary difficulties described in *Hanover* for defendants there present an equal obstacle for all plaintiffs other than the one who purchases from defendant. Defendants would thus pervert the purposes of the Court in *Hanover* by using it to obstruct the bringing of such actions. *In re Master Key Antitrust Litigation,* 1973-2 Trade Cas. ¶ 74,680, at 94,979.

Defendants overlook several important factors in making their argument. First, those policy considerations served by rejecting the passing-on defense attempted in *Hanover* operate here to permit plaintiff to prove such matters where necessary. The need of an antitrust plaintiff to delve into pass-on questions, furthermore, is limited. And the standard of proof imposed on defendants in *Hanover,* appropriately high to prevent the defeat of liability by an admitted wrongdoer, is wholly inappropriate to the proof of his case by an antitrust plaintiff.

The only occasion for a plaintiff removed from defendant in the chain of distribution to raise passing-on matters relates to his need to prove the fact of his injury. Such a plaintiff must establish "impact" by demonstrating that the overcharge was "passed-on, at least in part" to him through the chain of distribution. See *Perkins v. Standard Oil Company,* 395 U.S. 642, 649, 650 (1969). See also *In re Western Liquid Asphalt Cases,* 487 F.2d 191, 199 (9th Cir. 1973); *In re Master Key Antitrust Litigation,* 528 F.2d 5, 12, n. 11 (2d Cir. 1975).

Proof that an overcharge was "passed-on, at least in part" is on its face a lesser matter than that undertaken by the defendant in *Hanover.* The defendant in *Hanover* offered to prove not just the fact of pass-on, but also its extent. His success would have thus depended on pro-

tracted proceedings involving the presentation of massive evidence and complicated theories. 392 U.S. at 493.

The pass-on question after *Hanover,* as shown above, can have no logical application to proof of damages sustained by a plaintiff in an antitrust case. The proper measure of damages in an overcharge case is the overcharge.

This Court, furthermore, did not find the problems of proof in *Hanover* insuperable without first establishing an unusually high standard of proof. The Court imposed on the guilty defendant the requirement that it prove pass-on directly as a matter of demonstrable fact, and not as a matter of mere inference or economic theory. 392 U.S. at 492-493.[5]

The Court's purpose, of course, in imposing the high standard of proof was to prevent the wrongdoer from escaping liability to a legitimate plaintiff. This Court in the past, for the same purpose, has relaxed the standard of proof for a legitimate plaintiff attempting to show his damages. *Bigelow v. RKO Radio Pictures,* 327 U.S. 251 (1946); *Story Parchment Co. v. Paterson Parchment Paper Co.,* 282 U.S. 555 (1931).

The basis for the difference in treatment is the importance of treble damage actions, and because it was defendant himself, through his wrongful conduct, who has created the difficulties of proof. See *Bigelow v. RKO Radio Pictures,* supra at 265; *Story Parchment v. Paterson Parchment Paper Co.,* supra at 563. Cf. *Hanover Shoe,* supra at 494. Defendants here for the same reasons should not be allowed to use any difficulties of proof they have

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5. There is no mention in the Court's opinion of the right to go to the jury on the basis of substantial evidence, regardless of whether it is direct or circumstantial, nor is there mention of the ordinary "preponderance of the evidence" standard in civil cases.

created by their wrongful conduct to protect themselves from liability to otherwise legitimate plaintiffs.

Defendants' attempt here to raise a passing-on type defense should be rejected for all the above reasons. The possibility under the above principles that more than one level may seek recovery of the same overcharge is no proper concern of defendants. The Court of Appeal below correctly assessed the problem as one of apportionment between those who have sued. 536 F.2d at 1167.

II.

The Award of a Public Construction Contract Pursuant to Competitive Bidding Would Fall Within the Exception Recognized in Hanover Shoe in Any Case.

Hanover Shoe, even if it operates to prevent the normal plaintiff removed in the chain of distribution from proving his case, contains an important exception, as follows:

> ". . .[T]here might be situations—for instance, when an overcharged buyer has a pre-existing 'cost plus' contract, thus making it easy to prove that he has not been damaged — where the considerations requiring that the passing on defense not be permitted in this case would not be present." 392 U.S. at 494.

The Ninth Circuit, in a case involving the award of public road construction contracts pursuant to competitive bidding, after noting the above exception, stated flatly, "Ours is such a case." *In re Western Liquid Asphalt Cases, supra,* at 196.

The Ninth Circuit had before it facts based on affidavits and other evidence showing in detail the operation of the competitive bidding process as to public construction projects. This Court has before it no such facts, but their absence is defendants' responsibility.

The District Court below denied "standing" to the Illinois plaintiffs on the simple fact that plaintiffs ended up with buildings while defendants had sold concrete blocks for use in those buildings. 67 F.R.D. at 467. The Court of Appeals below found "standing" on the fact that plaintiffs as "ultimate consumers" of the product were, in effect, within the "target area" of defendants' alleged conspiracy. 536 F.2d at 1167.

Defendants now rely improperly in this Court on new facts not considered by either Court below. Defendants rely on facts found or assumed in other reported cases without regard to the absence of those facts in the record of this case, to wit: *Hanover Shoe,* supra, and *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,* 50 F.R.D. 13 (E.D. Pa. 1970), aff'd per curiam sub nom., *Mangano v. American Radiator & Standard Corp.,* 438 F.2d 1187 (3rd Cir. 1971). Defendants significantly ignore the related cases dealing with the "passing-on" question in the context of the award of public construction contracts. See e.g., *In re Western Liquid Asphalt Cases, supra; Armco Steel Corp. v. State of North Dakota,* 376 F.2d 206 (8th Cir. 1967); *In re Master Key Antitrust Litigation,* 1973-2 Trade Cas. ¶ 74680.

Defendants' reliance on selected cases for their facts is in derogation of their burden on summary judgment of establishing their right to judgment based on established principles of law; they must show the absence of any genuine issues of material fact. *Adickes v. Kress & Co.,* 398 U.S. 144, 153, 156-158 (1970); *Island Equipment Land Co. v. Guam Economic Development Authority,* 474 F.2d 753, 756 (9th Cir. 1973). See also 6 Moore's Federal Practice ¶ 56.22 [2]. Defendants' burden is particularly great where, as here, the issue is of "critical" importance, *Askew v. Hargrave,* 401 U.S. 476 (1971), raises matters of "public" im-

portance, *Eccles v. Peoples Bank of Lakewood Village,* 333 U.S. 426, 434 (1948), and is left in considerable doubt because of conclusions found in several prominent cases. See *In re Western Liquid Asphalt Cases, supra; Armco Steel Corp. v. State of North Dakota, supra; In re Master Key Antitrust Litigation,* supra.

The problem of an inadequate record is compounded by what is, in the view of the State of California, a less than accurate depiction of the probable facts by counsel for either side. Counsel for plaintiffs fails to clarify that the pertinent reported decisions show that the manufacturer does not *sell* his product until *after* award of the general contract by the State, and that the bid submitted upon which the award is made incorporates the full cost of materials, here concrete block, including any possible overcharge. This Court's application of the cost-plus exception in *Hanover* to a case involving the award by the State and local governments of public construction contracts should not be made without a full and accurate factual record in order to establish the economic realities involved. *United States v. Phosphate Export Assoc.,* 393 U.S. 199, 208 (1968). See also *State of Minnesota v. United States Steel Corp.,* 438 F.2d, 1380 (8th Cir. 1971).

The facts and analyses set forth in the *Asphalt, Armco Steel* and *Master Key* cases show that the award of a public construction contract based on competitive bids operates as to the awarding authority in a manner indistinguishable from a preexisting cost plus contract, at least as to the passing on of illegal overcharges in the price of materials used in the project. The operative event is award of the contract. The pass-on is complete, and full damage is inflicted upon the awarding authority upon award of the general contract before the product has moved from any-

one's hands, and quite possibly even before it has been manufactured.

Contractors and subcontractors carry no inventory of materials to be incorporated in public works projects. They commonly compute material costs in preparation of their bids by obtaining quotes from the manufacturers or other material suppliers; there is no basis for them to exercise an "independent pricing decision" as to such materials. *In re Western Liquid Asphalt Cases, supra* at 195, n. 4; *Armco Steel Corp., supra* at 210, 211; *In re Master Key Antitrust Litigation, supra* at 94981. See also, *Drennan v. Star Paving Co.,* 51 Cal.2d 409; 333 P.2d 757 (1958).

Contractors likewise carry no inventories of completed public projects. Contractors do not construct public buildings in the hopes of finding a buyer. Contrary to defendants' vigorous assertions here, contractors do not operate in a market involving independent pricing decisions applied to public buildings.

Material costs, including any illegal overcharges, thus are automatically and mechanically passed on to the State or other awarding authority through the competitive bidding process. The stage is set for the infliction of injury at the time of contract award. All that is necessary to complete the infliction is to build and pay for the project.

The damage is not undone by subsequent events. There are three possibilities.

The price paid by the contractor at the time of actual purchase for incorporation of the material into the project may stay the same as the price quoted to and used by the contractor in the preparation of his bid.[6] The price paid

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6. This is the most likely occurrence. See *In re Western Liquid Asphalt Cases, supra* at 195. ("In any case, sub-bids from suppliers and subcontractors are regarded as firm.") *Drennan v. Star Paving Co.,* 41 Cal.2d 409, 33 P.2d 757 (1958). (Contractor as a matter of state law is entitled to enforce quotations or sub-bids.)

by the contractor may be less than that quoted, or, finally the price to the contractor may have gone up. The State's injury remains the same in all cases, however, because the State pays for the project based on the total contract price which in turn was based upon the original quotation by the supplier to the contractor or subcontractor. *In re Western Liquid Asphalt Cases, supra,* at 195. See also *Drennan v. Star Paving Co., supra.* Analysis of the pass-on question where competitive bidding is involved in terms of the actual purchase of the material is thus not only misleading, but is positively wrong.

The competitive bidding process precludes a double recovery problem. The state automatically suffers injury to the full extent of the illegal overcharge contained in the material quotes used in preparation of the contractor's bid, and the contractor suffers none. The contractor suffers possible injury only where the price to him for the product is raised after award of the contract. The right of recovery for such possible further injury belongs entirely to the contractor. *In re Western Liquid Asphalt Cases, supra* at 200, 201.

Defendants' failure to foreclose the substantial possibility that the State of Illinois was damaged in a cost-plus fashion through the competitive bidding process should preclude their right to summary judgment. Defendants allow for the possibility under *Hanover* of cost plus situations other than pre-existing cost-plus contracts, but fail to foreclose their possible existence here.

CONCLUSION

Allowance of the "passing-on" defense advanced by defendants here would portend serious consequences for the effectiveness of private treble damage actions. Those most injured, the States, would be greatly impaired in the exercise of their public duty of enforcing the antitrust laws. Moreover, the courts would continue to be clogged by protracted discovery and trial of pass-on issues.

We respectfully submit that the decision by the Court of Appeals, reversing the summary judgment granted by the District Court below, should be affirmed.

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